THE Attorney's Practice IN THE Court of Common Pleas:

OR, AN

INTRODUCTION

TO THE

KNOWLEDGE of the PRACTICE of that COURT, as it now ſtands on the Regulation of ſeveral late ACTS of PARLIAMENT, RULES, and DETERMINATIONS of the ſaid COURT:

WITH

Variety of uſeful and curious PRECEDENTS in *Engliſh*, drawn or peruſed by Counſel; and a Complete INDEX to the Whole.

By ROBERT RICHARDSON, Gent.

The Fifth Edition, with Large Additions.

In TWO VOLUMES.

VOL. I.

LONDON:

Printed by His Majeſty's Law-Printers;

For B. TOVEY, J. RIVINGTON and SONS, P. URIEL, W. OWEN, S. CROWDER, B. LAW, W. FLEXNEY, G ROBINSON, E. BROOKE, S. BLADON, W. STUART, T. WHIELDON, and T. WALLER. 1775.

1x
R52/a4
ed5

Rec. May 27, 1874

THE

PREFACE.

THE *Attorney's Practice* in the *Court of King's Bench* having met with a very favourable reception, and being univerſally allowed to be the moſt uſeful book of the kind hitherto publiſhed, the author of it was induced to compile the following work, which he formed on the ſame plan with the former; here-

in are ſet forth under their proper heads the ſeveral acts of parliament relating to the practice, ſuch rules of court as are now in force, adjudged caſes on moſt points of practice, and a great variety of uſeful precedents.

The ſtatutes and rules of the court are not ſet forth in a brief or ſummary way, but the enacting and ordering parts generally at large, ſo that the reader will ſcarce ever have occaſion to apply to the ſtatutes or rules themſelves.

To the acts of parliament, rules of court and adjudged caſes, the author has chiefly confined himſelf in this work, chuſing rather to be ſilent, than to ſay

ſay any thing for which he had not ſufficient authority, and being cautious of nothing more than leading the young practicer into a miſtake.

The precedents, of which the greateſt part were drawn or peruſed by counſel, are ſuch as will be moſt frequently wanted in the general courſe of buſineſs.

To render this book the more uſeful, a very copious index is added, drawn under a great variety of heads, ſo that the reader may with eaſe apply to any particular point of practice he ſhall want to be informed of.

To the ſecond edition was added a new volume of pleadings,

a thing deſired by many, and, it is hoped, will be acceptable to all who are willing to attain a competent knowledge in their profeſſion; for it is a certain truth, that he can never be an able attorney who is not a good entering clerk, and tolerably well ſkilled in ſpecial pleading. Formerly all attornies drew their own pleadings, and never had occaſion for any aſſiſtance but the advice of the moſt learned. This kind of learning, which is now too much neglected, led them into the very reaſons of the practice, and into a knowledge of the common law, which none but a ſpecial pleader can be ſaid to be thoroughly maſter of: An attorney, without being acquainted with ſpecial pleading, can

can have no other, than a confuſed knowledge of ſuch particular inſtances of practice only as have paſſed through his own hands, and upon the leaſt variation is as much at a loſs as if he never knew any thing of the matter; hence ſpring demurrers, motions, expence and endleſs delays to the ſuitors, and diſcredit to the practicer; for which reaſons the loſs of this branch of learning among the generality of the profeſſion is greatly to be lamented, and the retrieving of it can't be too much recommended.

In the third edition were added inſtructions for levying fines, and ſuffering common recoveries, with ſome directions touching replevins.

In

In this fifth edition, beſides a great variety of new acts of parliament and rules of court, and alſo adjudged caſes from *Barnes*, *Wilſon*, &c. are many additional notes and obſervations, and the following entire new heads, to take them alphabetically:

1. Action for criminal converſation.
2. Inrolling deeds.
3. Motions.
4. Mutual debts and credits.
5. Proceedings againſt peers and members of parliament.
6. Proceedings in order to ſave the ſtatute of limitations.
7. References from court. And
8. Summonces.

See the Index.

The following order of the chief juſtice not being publiſhed

till that part of this volume was printed off, in which, it could with any degree of propriety be introduced, it is here inſerted.

Under the printed papers of ſettings in and after *Hilary* Term, 1778, is the following notice given, *viz.*

The Lord Chief Juſtice to obviate a great expence and inconvenience to defendants and their witneſſes, in cauſes entered for the *firſt* day of ſittings *after* term, through the plaintiff's not paſſing the records in proper time, hath thought fit to order, that all records in ſuch cauſes, be paſſed and left with his marſhal, on the preceding evening of ſuch ſitting, by the hour of ſeven.

THE

THE Attorney's Practice IN THE Court of Common Pleas.

Of the Juriſdiction of the Court.

ALL pleas are regularly divided into pleas of the crown, and into common or civil pleas. Pleas of the crown are thoſe which concern treaſons, felonies, miſpriſions of treaſons, *&c.* This court is the lock and key of the common law in common pleas, and therefore called the *Court of Common Pleas*; for in this court real actions, whereupon fines and recoveries (the common aſſurances of the realm) do paſs, and all other real (*a*) actions by original writs, are to be determined. In all (*b*) perſonal

(*a*) Actions real are ſuch actions whereby the demandant claims title to any lands or tenements, rents, or commons, in fee-ſimple, fee-tail, or for term of life. Every action real is either poſſeſſory, that is of his own poſſeſſion or ſeiſin, or anceſtrel, that is of the poſſeſſion or ſeiſin of his anceſtor. 6 *Rep.* 3.

(*b*) Actions perſonal are ſuch actions whereby a man claims a debt or other goods and chattels, or damage for them,

ſonal and mixt (*c*) actions, this court and the court of *King's Bench* have a concurrent juriſdiction.

The juriſdiction of this court is general, and extendeth itſelf throughout all *England*.

Generally all actions (*d*) in this court are founded upon original writs iſſuing out of the *Chancery*, and returnable in this Court, whereupon the plaintiff proceeds either to arreſt the defendant, outlaw him, or ſerve him with a copy of proceſs, purſuant to the ſtatutes 12 *G.* 1. *c.* 29. 5 *G.* 2 *c.* 27. Perpetuated by 21 *G.* 2. *c.* 23.

---

them or damages for wrong done to his perſon, and is properly that which in the civil law is called *actio in perſonam*, which is brought againſt him who is bound in covenant or default to give or grant any thing. "*Terms* "*of the law*," Tit. "*Actions perſonal*."

(*c*) A mixt action is a ſuit given by the law to recover the thing demanded, and damages for the wrong done; as in aſſize of novel diſſeiſin, which writ (if the diſſeiſor makes a feoffment to another) the diſſeiſor ſhall have againſt the diſſeiſor and the feoffee, or other tertenant, and thereby ſhall recover his ſeiſin of the land, and his damages for the meſne profits, and for the wrong done him; and ſo is an action of waſte and *quare impedit*; but an action of *detinue* is not called an action mixt, altho' by it the thing withheld is demanded, and ſhall be recovered if it may be found, and damages for the withholding, and if it cannot be found, damages for the thing and the detaining; but ſtill an action of detinue is called only an action perſonal, becauſe it ſhould be brought only for goods and chattels or charters.

(*d*) An action is the form of a ſuit given by law to recover a thing, as an action of debt, &c. or as it is in 8 *Rep.* 151. *a.* an action is a right of proſecuting to judgment that which is due unto any one; *actio eſt jus proſequendi in judicio, quod alicui debetur.*

But

But this court may hold plea on writ of privilege iſſuing originally out of this court at the ſuit of any attorney, officer, miniſter, or clerk of the court intitled to ſuch writ.

It may alſo hold plea by bill, which is in the nature of a petition to the court, againſt any attorney, officer or miniſter, intitled to the privilege of the court; and expreſſes either the grievance or wrong which the plaintiff has ſuffered by the defendant, or elſe ſome fault by him committed againſt ſome law or ſtatute of the realm.

A knight, citizen, burgeſs, or other perſon intitled to privilege of parliament, may be ſued in this court by original bill, in manner as directed by the ſtatute 12 & 13 *W.* 3. *c.* 3.

This court may, upon proper ſuggeſtions, grant prohibitions to keep, as well temporal, as eccleſiaſtical courts, within their proper bounds and juriſdictions, without any original writ or plea depending; for the common law, which in theſe caſes is a prohibition of itſelf, ſtands inſtead of an original. 12 *Co.* 108.

Actions are alſo removed into this court out of inferior courts of record by writ of *Habeas corpus cum cauſa*, or (*e*) *Certiorari*; and out of inferior courts not of record, by

(*e*) *Certiorari* is a writ that lies to remove a record into a ſuperior court from an inferior court of record, where the party ſuppoſes he may not have equal juſtice done him.

(*f*) *Pone*, (*g*) *Recordari*, (*h*) *Accedas ad curiam*, or writ of falſe (*i*) judgment.

This court hath alſo juriſdiction for the puniſhment of its own officers and miniſters, and all other perſons guilty of contempts againſt the rules and orders of court.

Sir John Walter *refuſed to ſurrender his patent without cauſe of miſbehavior ſhewn, the ſame being granted during good behavior.*

Notwithſtanding king *Charles* I. commiſſioned Sir *John Walter*, a profound learned man, a grave and able (*k*) judge, and of great integrity and courage, by his royal letters patent, to exerciſe his office, during his good behaviour, yet, he being in the king's (*l*) diſpleaſure, was in the beginning of *Mich.* (*m*) term, 5 *Car.* 1. *A. D.* 1630, before he ſet in court, (*n*) required, by command from his majeſty, to forbear to come to *Weſtminſter* (*o*) *Hall*, for the purpoſe of exerciſing his judicial place in (*p*) court, and, in obedience to the ſaid command, he did

---

(*f*) Is a writ whereby a cauſe depending in the county court is removed into this court.

(*g*) Commonly called a *refalo*, taking its name from the firſt ſyllable of each word in the name of the writ, viz. *recordari facias loquelam.*

(*h*) This writ lies to remove a cauſe out of the court baron into this court.

(*i*) If a falſe judgment be given in a court not of record, as in a county-court, hundred, or court baron, the party injured may have a writ of falſe judgment, returnable in this court.

(*k*) Whitl. Mem. Engl. Af. 16. Col. 1, Cr. Car. 147.

(*l*) Whitl. Mem. ib.

(*m*) Cr. Car 153.

(*n*) The king diſcharged him from his ſervice by meſſage, Whitl ib. ſee id. 14. Col. 1.

(*o*) W. Jo. 230.

(*p*) Cr. Car. 147, 153.

(*q*) forbear,

(*q*) forbear, and never exerciſed his office, after the king forbad (*r*) him; but yet he ſtill retained his (*s*) poſt; and becauſe his judicial office was conferred on him, *quam diu ſe bene geſſerit*, he would not leave his place, nor ſurrender his patent, but by the legal proceeding of *Sci. Fa.* to try, whether he did *bene ſe gerere* or (*t*) not; and that the king might ſhew what cauſe he had, for determining his patent, or for him to forfeit it; ſo he continued a judge to the time of his death (*u*).

Commiſſions of the judges during good behaviour, inſtead of during pleaſure.

After the paſſing the votes againſt the judges, for their opinion in caſe of ſhip money, 16 *December* 1640, and tranſmitting them to the houſe of peers, and their concurring with the houſe of commons therein, an addreſs was made to the king ſhortly after, that his majeſty for the future would not make any judge by patent (*w*) *during pleaſure*, but that they might hold their places hereafter, *quam diu ſe bene geſſerint*; and his majeſty did readily grant the ſame; and in his ſpeech to both houſes of parliament, at the time of his giving his royal aſſent to two bills, one to take away the high (*x*) commiſſion court, and the other the court of ſtar (*y*) chamber, and regulating

(*q*) W. Jo. 230.
(*r*) Whitl. Mem. Engl. Af. 16. Col. 1.
(*s*) Id. ib.
(*t*) Whitl. Mem. 16. Col. 2.
(*u*) Cr. Car. 147.
(*w*) Clar. Hiſt. Rebel. 121.
(*x*) Stat. 16 Car. 1. Chap. 11.
(*y*) Stat. 16 Car. 1. Chap. 10.

the power of the council table, he hath this paſſage "If you conſider what I have done this parliament, diſcontents will not ſit in your hearts; for I hope you remember that I have granted that the judges hereafter ſhall hold their places, *quam diu ſe bene* (z) *geſſerint.*"

Sir John Archer *refuſed to ſurrender his patent without cauſe of miſbehavior ſhewn, the ſame being granted during good behavior.*

As king *Charles* II. obſerved the ſame rule and method, in granting patents to judges, *quam diu ſe bene geſſerint*, as his royal father did, as appears upon record, in the rolls of the court (*a*); ſo he did in removing a judge, notwithſtanding his ſolemn grant inrolled on record to the contrary; for Sir *John Archer*, one of his juſtices of the court of *common pleas*, after having ſat in this court, nine years, was, during the vacation after *Mich.* (*b*) term, 24 *Car.* 11. (being then ſenior (*c*) judge,) required to forbear the exerciſe of his office, either in court or elſewhere; and was amoved from ſitting therein, for reaſons unknown to Mr. Juſtice (*d*) *Raymond*; but Sir *John* having his patent,

---

(z) 3 Ruſher. Hiſtor. Collect. 1366.

(*a*) Clar. Hiſt. Rebel. 121. Mr. Juſtice *Croke* obſerves, that the judges of both benches are made only during the king's pleaſure, ſo that they are removeable at the king's will, Cro. Car. 147. and Mr. Juſtice *Jones* obſerves, that Sir *Humphry Davenport's* patent (Sir *John Walter's* immediate ſucceſſor in the chief baronſhip in the *Exchequer*) was during pleaſure, and that of Sir *Walter's*, during good behavior. W. Jo. 230. 3 Ruſh. Hiſtor. Collect. fol. 1366.

(*b*) T. Jo. 43.

(*c*) T. Raym. 217. T. Jo. 43.

(*d*) T. Raym 217.

quam diu ſe bene (*e*) *geſſerit*, refuſed to ſurrender the ſame, without a *Scire Facias:* ſo that he continued a juſtice of this court, though prohibited to ſit (*f*) therein; and, notwithſtanding his removal, enjoyed his patent, and received a ſhare in the profits of the ſaid court, as to fines and other proceedings, by virtue of his patent; and his name was uſed in thoſe fines, *&c.* as a judge of that (*g*) court.

By Stat. 20 *Edward* III. chap. 1. the king's juſtices are to take no fee, but of the king. *Judges ſalaries.*

The ordinary allowances of the judges, were, in *Edward* I.'s time, very (*h*) liberal, according to (*i*) *Whitlock.*

By ſtat. 10 *Hen.* VI. ſtat. 2. the ſalaries of the judges were to be paid them half yearly, in *E.* and *M.* terms, by the lord high (*k*) treaſurer of *England*; but it appears by the year (*l*) books, that they were to be paid

(*e*) T. Jo. 43. T. Raym. 217.

(*f*) T. Raym. 217.

(*g*) 3 Ruſher. Hiſtor. Collect. 1364.

(*h*) The ſalary of the judges was liberal anterior to the reign of *Edward* I. according to Sir *William Dugdale*, for he informs us, the chief juſtice of England received 1000 marks a year, for his ſupport in that great employment, ſo early as 44 *Hen.* II. Dugd. Orig. Jur. 20.

(*i*) Whitl. Mem. Engl. Aſ. 344.

(*k*) The treaſury is now and hath been in commiſſion, ag reat number of years.

(*l*) 10 *Hen.* VI. fol. 1 *Hen.* VII. fol. 3, 4, 5.

out of the (*m*) arrears of the cuſtoms, by the cuſtomers and comptrollers of *London*; and that it was enacted by the ſaid ſtatute, that they ſhould pay to the juſtices, out of the firſt monies ariſing out of the cuſtoms; and that they ſhould have their proportion by the day, and it was held that the cuſtomers were liable, though the king granted a licence to ſome merchants, to retain the cuſtoms, in their hands, for the judges met at *White-Fryars*, and agreed to ſue, but the cuſtomers (*n*) complied.

From the death of king *Hen.* VI. to the date of their patents, in king *Richard* III.'s time, the judges had a privy ſeal to receive their ſalaries; as they had from the mean time, between the death of *Richard* III. and the date of their patents, in *Henry* (*o*) VII.'s time.

Sir *William* (*p*) *Dugdale*, is of opinion, that the ſalaries of the judges were more cer-

---

(*m*) By ſtat. 1 *Geo.* III. chap. 23. ſect. 3. the ſalaries of the judges are payable out of the annual ſum granted for the ſupport of his majeſty's houſhold, and the honor and dignity of his crown; and by ſect. 4. they are, after the demiſe of his majeſty, to be charged upon and paid out of the duties granted for the uſe of his majeſty's civil government, as ſhall be ſubſiſting after ſuch demiſe, until ſome other proviſion be made by parliament for the expences of the civil government; and until the making ſuch proviſion, and ſecuring the continuance thereof, ſuch ſalaries ſhall be paid out of the monies applicable to the ſaid uſes and expences.

(*n*) See Year book, 1 *Henry* VII. fol. 3.

(*o*) See Year book, 1 *Henry* VII. fol. 4, 5.

(*p*) See Orig. Jur. 105.

tain

tain after 18 *Henry* VI. becauſe in that year the judges of all the courts in *Weſtminſter Hall*, together with the attorney general, and king's ſerjeants at law, exhibited a petition to the parliament, in *French*, a copy whereof may be ſeen in Sir *William's Origines* (*q*) *Juridicales*; ſoon after which their ſalaries were (*r*) encreaſed.

Oliver's (*s*) Parliament provided that every judge ſhould have a competent ſupply, according to his great pains and quality, for their better encouragement and ſupport.

By ſtat. 12 & 13 *William* III. chap. 2. ſtat. 13. the ſalaries of the judges were aſcertained and eſtabliſhed; during which reign, and until the acceſſion of his preſent majeſty's great grandfather, king *George* I. the ſalaries of all the judges (the chiefs as well as the puiſne) were equal, viz 1000 *l.* a year, upon whoſe acceſſion they were increaſed by diſtinct patents from thoſe, by which they were appointed judges, viz.

The ſalary of the chief juſtice of this court, to double his former ſalary, and thoſe of the reſt of the judges, to half as much again, as their former ſalaries. See 2 R. Raym. 1319.

By ſtat. 32 *George* II. chap. 35. ſect. 18. the ſalary of every of the puiſne judges is augmented 500 *l.*

(*q*) Id. ib.
(*r*) Id. 109, 110.
(*s*) Whitl. Mem. Engl. Af. 344.

By

By ſtat. 1 *George* III. chap. 23. ſect. 3, 4. ſuch ſalaries as are ſettled by act of parliament upon, or granted by his majeſty to any judge, ſhall be paid him as long as his patent and commiſſion continue in force.

The ſalaries of the judges of this court ſeem now not only to be aſcertained but alſo eſtabliſhed, as follows: The lord chief juſtice 2500 *l.* (*t*) *per annum*, every of the puiſne judges 2000 *l. per annum.*

At common law the patents of the judges were determined by the demiſe of the crown, but by ſtat. 7 and 8 *William* III. chap. 27. ſect. 21. and 1 *An.* ſtat. 1. chap. 8. ſect. 1, 2. no patent or grant of any office ſhall ceaſe or be void, by reaſon of the demiſe of the crown, but ſhall remain in force for ſix months, unleſs ſuperſeded by the ſucceſſor, and by ſtat. 12 and 13 *Wil.* III. chap. 2. the commiſſions of the judges are to be made *quam diu ſe bene geſſerint*, but upon the addreſs of both houſes of parliament, they may be removed.

The court conſiſts of a chief juſtice and three puiſne judges, created by letters patent; but no one can be conſtituted a judge of this court, unleſs he be a ſerjeant of the degree of the coif.

(*t*) This judge's ſalary was encreaſed from 2000 *l.* to 2500 *l.* a year, by his preſent majeſty; and the reaſon it is not equal to other chiefs is, becauſe all fines and recoveries are levied and paſſed in this court only, and the fees thereof are almoſt the ſole perquiſites of the chief.

The

The preſent judges are Sir *Thomas De Grey*, chief juſtice; Sir *Henry Gould*, ſecond; Sir *William Blackſtone*, third; and Sir *George Nares*, puiſne juſtice.

Officers of the Court of Common Pleas.

THE *cuſtos brevium* is the firſt or principal officer of the court of *Common Pleas*, and holds his place by grant from the crown; the preſent patentees are *John Browning*, Sir *Robert Eden*, *Frederick Young*, and *Edward Gore*, who execute the ſaid office by *John Walton*, eſq; their deputy. *Cuſtos brevium. His appointment.*

The duty of this officer is to record and file in his office all original and judicial writs, and inquiſitions taken by virtue of any ſuch writs, all poſteas after verdicts, and fines, with the concords ſigned by the parties acknowledging the ſame; and the writs of *Dedimus poteſtatem* iſſued for taking the acknowledgment of ſuch fines, with the tranſcripts thereof, *&c.* which fines are by him entered in a book of the ſame term the reſpective writs of covenant are returnable, and the proclamations of ſuch fines are by him indorſed, upon the captions, according to the ſtatute. He is alſo to record and file all writs of entry and ſummons, writs of *Dedimus poteſtatem* for taking warrants of attorney thereupon, and writs of ſeiſin to ſupport recoveries ſuffered in the ſaid court; to make copies and exemplifications of the ſaid writs and records when required, and to return writs of *Certiorari*, directed to him, for the *And duty.*

removing any writs or other records into the court of *King's Bench*.

Prothonotaries.

Their appointment, &c.

There are three prothonotaries of this court, who hold their offices for their respective lives, and (*a*) are admitted by the chief justice of the court for the time being. The second prothonotary is admitted on the nomination of the *custos brevium*, who, in right of his office, has the appointment of the second prothonotary. Each of the three prothonotaries has, belonging to his office, one secondary, one clerk of the judgments, and one clerk of the dockets. The present prothonotaries are *William Mainwaring*, *Anthony Dickens*, and *Henry Earle*; their office is No. 2. in *Tanfield* court, *Inner Temple*; and their hours of attendance from 9 in the morning to 1 in the afternoon, both in term and vacation; and from 4 in the afternoon to 8 at night in term time; and to 6 in the evening in vacation.

(*a*) *Memorandum*, That the office of chief prothonotary in the Common Pleas, being vacant, after the last term, by the death of *Nicholas Rockwood*; and lord *Brook*, chief justice of the Common Pleas, gave the said office to *Gabard* his wife's brother; and, because he was not qualified, revoked it, and conferred the same on *Whiteley*, contrary to the pleasure of the other justices, who thought *Bill* a fitter person. *Mich.* 4 & 5 *P.* & *M. Dy. Rep.* 150 b. pl. 1. *Rast. Ent.* 443. See the oath of a prothonotary. *Rast. Ent.* 442. See the admission of a second prothonotary, and the admission of a third prothonotary. *Moyle's Entr. fo.* 3.

The

The chief prothonotary adminiſters the oaths to the officers and attornies of the court; enters on record the patents of the juſtices, and the patents, ſurrenders and admiſſions of the other officers of the court. He enters on a remembrance roll the names of all attornies ſworn in court, and makes certificates thereof to the clerk of the warrants, who thereby enter their names in the roll of attornies. He enters all writs of adjournments of the terms; he draws up the general rules of the court, made for regulating and ſettling the practice in the proceedings therein, and cauſes the ſame to be ingroſſed and hung up in the treaſury chamber at *Weſtminſter*, and gives copies thereof to the judges, and to the other prothonotaries and officers of the court, if required, without any fee. He adminiſters the oaths and declarations taken to the government; and keeps an alphabetical liſt of the names of the perſons taking the ſame; and files in his office the certificates brought in by them; and alſo the rolls on which they ſubſcribe their names. He has the cuſtody of the court-book, in which are entered the names of all cauſes on demurrers, ſpecial verdicts, and other matters that are to be argued in court, and of cauſes that are to be tried at bar, with the reſpective terms, number-rolls, and offices in which they are entered, and takes minutes of the judgment of the court in all cauſes argued therein. *The duty of the chief prothonotary.*

The chief prothonotary is alſo attorney for the city of *London* within this court, and hath

hath from the city yearly four yards of black cloth to make him a gown; and a livery fee of 1 *l.* 13 *s.* 4 *d.* is paid yearly to him by the ſecondaries of *London*, as deputy-ſheriff.

Duty of the three prothonotaries.

The three prothonotaries, in term time, attend the ſitting of the court at *Weſtminſter*, for the diſpatch of ſuch matters as ariſe from cauſes entered in their reſpective offices, and to inform the court of the ſtate of ſuch cauſes, and to certify the court in matters of practice when required. Each of the prothonotaries has a publick office in one of the inns of court, at which they reſpectively attend every afternoon, in term-time, and out of term every day (ſundays and holidays excepted) from nine in the morning till one or two, and from four in the afternoon till eight or nine.

It is their duty to enter on record all declarations, pleas, replications, and pleadings ſubſequent, demurrers, joinders in demurrers, and judgments. To enter all bills filed againſt attornies and other privileged perſons, and forejudgers thereon for want of appearance. To ſign writs of attachment, *Habeas Corpus*, *Procedendo*, *Certiorari*, *Venire facias*, *Subpœna*, *Scire facias*, *Capias ad ſatisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias poſſeſſionem*, *Habere facias ſeiſinam*, *&c.* To ſtrike ſpecial juries, and to ſign records of *Niſi prius*. They are to ſee that all common recoveries be carefully ingroſſed on rolls of the court, examined, docketted, and placed in their proper offices, and the writs belonging to the ſame filed with the *cuſtos brevium*,

brevium, and to examine all exemplifications of ſuch recoveries.

Perſons committed by the court for contempt are examined on interrogatories by the prothonotaries, who make reports thereon, and on other matters referred to them by the court, and tax bills of coſts, and ſtate the debts and coſts on bills, bonds, mortgages, and other ſecurities, on references made to them by the court, purſuant to the act made in the 4th and 5th years of queen *Anne*, for the amendment of the law. Stat. 4 & 5 Ann. c. 16.

The prothonotaries have the cuſtody of all common and plea rolls, and deliver the ſame out, and keep an account of the perſons names to whom the rolls are delivered, that they may be able to call for a return of them, and make caret papers, certifying defaulters, in order to a proſecution, purſuant to ſeveral rules of the court. They keep an account of all rolls received into their offices, after proper entries are made thereon, and keep dockets of all judgments, entries of writs, and other entries, which they carefully examine with the rolls, before they are delivered into the office of the clerk of the eſſoins, or clerk of the warrants, and the writs into the office of the clerk of the *cuſtos brevium*, which are afterwards by the ſaid officers carried into the treaſury of the court, but the dockets remain in the prothonotaries offices. The prothonotaries likewiſe keep remembrance rolls, on which all rules made in court are entered, and on which all recognizances of bail, appearances, *Scire facias's*

cias's and *Præcipe's* taken at the bar on common recoveries, are entered.

Secondaries. There are three ſecondaries in this court, one belonging to each prothonotory, who

Their appointment. has the nomination and appointment of ſuch ſecondary; which appointment has been uſually for the joint lives of the prothonotary and ſecondary. The preſent ſecondaries of the court are, *Henry Fothergill*, *Alexander Gerrard*, and *William Skinn.*

And duty. The ſecondaries in term-time attend the court and the judges in the treaſury, to read all the records, writings, affidavits, petitions, papers, and exhibits; to take minutes of all rules and orders, and draw up the ſame, and take recognizances in court. They enter all commitments of priſoners, diſcontinuances, and ſatisfactions acknowledged upon record, and amend records by order of court. They adminiſter the oaths to priſoners taking the benefit of the late act made for the relief of debtors, with reſpect to the impriſonments of their perſons, prepare aſſignments of their priſoners eſtates and effects, and draw up rules for their diſcharge. On trials at bar they act as aſſociates, that is, call the jury out of and in court, read the record, call the defendant, read all written evidence, call the jury before a verdict given, and record the verdict, take minutes of all ſpecial verdicts, and draw up the ſame, and make copies thereof for the plaintiff, defendant, and judges. They take an account of all fines, and recoveries paſſed, and ſuffered at bar. And in term-time, after the riſing

riſing of the court, attend at their offices to draw up the rules and orders made by the court, or by the judges in the treaſury, and enter them on the remembrance rolls, and makes copies of them, when required. They enter all rules to declare, plead, reply, rejoin, ſur-rejoin, rebut, ſur-rebut, and join in demurrer, and give rules for the attornies, and other officers of the court to appear to bills filed againſt them. And file and copy all affidavits, papers, and exhibits produced on motions, taxations of coſts, or otherwiſe, and ſuggeſtions and proceedings in ſpiritual courts, when prohibitions are applied for; and copy interrogatories and examinations of perſons committed for contempts. On complaints made by the priſoners of the *Fleet Priſon* againſt the warden, the ſecondaries attend the judges at ſuch places as they appoint, and file, read, and copy all affidavits and exhibits produced on ſuch complaints, and draw up all orders made thereon.

Clerk of the judgments.

The preſent clerk of the judgements *Lickbarrow Rowland.*

His appointment.

And duty.

It is the duty of this officer to draw up all final judgments after inquiſitions taken, verdicts obtained, or nonſuits had at *Niſi prius*, and on demurrers, and iſſues joined upon *Nul tiel record*; and to draw up and enter all continuances neceſſary in the aforeſaid judgments. To draw up the award of every *Decem tales*, and enter the ſame on the roll; to make out writs of *Diſtringas decem tales*, and *Diſtringas juratores*; and to draw

up the awards of writs of *Elegit*, and writs of partition, and enter the ſame, with the return thereof, upon the roll. To enter all ſatisfactions to judgments, when the ſame is done by the order of a judge, and not in open court; and to exemplify any of the abovementioned judgments, if applied for within a year after the ſigning of ſuch judgments. And by the ſtatute 4 & 5 *W. & M. c.* 20. they are to deliver over to the clerk of the eſſoins notes in writing of all judgments entered by them reſpectively on verdicts, writs of inquiry, demurrer, and every other judgment for debt or damages.

Clerk of the dockets. His appointment.

Mr. *Samuel Underword* is the preſent clerk of the dockets and declarations.

And duty.

He enters upon remembrance all appearances to writs of attachment of privilege, writs of *Scire facias*, bills, and other proceſs, iſſued out of, and filed in the offices of their reſpective prothonotaries. They deliver out to the attornies the rolls whereon pleadings are entered, and put them into a numerical order, when brought back, and make out papers, called caret papers, of ſuch as are wanting, and the attornies names to whom the ſame were delivered, and deliver copies thereof to the clerk of the warrants, and clerk of the eſſoins, to enable them to inform the court thereof. They prepare bail-pieces or recognizances entered into, to attachments of privilege, and other bailable writs iſſuing out of the prothonotaries

taries offices, and attend the court, or a judge, when ſuch recognizances are taken, and when ſuch bails are juſtified, or additional bail is put in, and alſo, when the defendant ſurrenders himſelf in diſcharge of his bail. They make copies of all ſpecial juries ſtruck by the prothonotaries for the plaintiffs and defendants; and, when required, make copies of bills of coſts, and papers produced before the prothonotaries on references, and of reports made in court by the prothonotaries. They make copies of rules of court from the remembrance rolls of terms that are paſt. They alſo make out certificates of declarations not being filed according to the rules of the court againſt priſoners, in order to their being diſcharged out of cuſtody for want of proceedings; and alſo certificates of writs of *Recordari*, and writs of falſe judgment, not being filed according to the courſe and practice of the court. And as clerks to the prothonotaries they make out copies of all the ſpecial verdicts for the judges, and attornies concerned therein; and in the abſence of the prothonotaries they perform the common buſineſs belonging to the prothonotaries offices.

Clerk of the reverſals. His appointment.

Rowland Lickbarrow is the preſent clerk of the reverſals, and is jointly and verbally appointed by the three prothonotaries.

And duty.

They draw up and enter the reverſals of outlawries, and enter the *præcipe's* thereof on remembrances, and draw up certificates thereof to the outlawry office; and draw up and

ingroſs the bail-pieces, or recognizances, in order to ſuch reverſals, and attend the court and judges therewith, and make out the *Superſedeas* when neceſſary.

Clerk of the treaſury. His appointment.

Thomas Jefferey's holds the place of clerk of the treaſury by parol appointment from the lord chief juſtice.

Clerks of the jurats, or under-clerks of the treaſury, and treaſury keeper.

Henry Brougham is clerk of the jurats, or one of the under clerks of the treaſury, for the counties of *Middleſex*, *Kent*, *Oxford*, *Hereford*, *Southampton*, *Wilts*, *Somerſet*, *Weſtmoreland*, and *Northumberland*, cities of *London*, *Briſtol*, and town of *Southampton*.

Richard Brook is clerk of the jurats, or one of the under-clerks of the treaſury, for the counties of *Cornwall*, *Bucks*, *Surrey*, *Hertford*, *Cambridge*, *Norfolk*, *Leiceſter*, *Derby*, *York*, *Bedford*, *Huntingdon*, *Monmouth*, *Warwick*, *Cumberland*, *Berks*, *Gloceſter*, *Salop*, *Dorſet*, *Northampton*, *Nottingham*, and town of *Nottingham*, counties of *Suffolk* and *Suſſex*, cities of *York*, *Coventry*, *Norwich*, towns of *Newcaſtle* upon *Tyne*, *Kingſton* upon *Hull*, and borough of *Leiceſter*.

And Mr. —— —— is clerk of the jurats, or one of the under-clerks of the treaſury for the county of *Devon*, city of *Exeter*, county of *Lincoln*, and city of *Lincoln*, county of *Worceſter*, and city of *Worceſter*, counties of *Eſſex*, *Stafford*, *Rutland*, and city of *Glouceſter*.

Their appointment.

The clerks of the jurats, or under-clerks of the treaſury, are admitted by the lord chief juſtice of the court, for the ſeveral counties,

counties, cities, and towns in their reſpective diviſions, and hold their places for their lives; Mr. *George Stubbs* is the treaſury-keeper, and holds his place alſo by the parol appointment of the lord chief juſtice.

The duty of the clerk of the treaſury is to have the care and cuſtody of the treaſury of the ſaid court, which doth contain the records of the ſame court of all common recoveries, entries of the money which the king hath upon fines; all judgments and iſſues, with the pleadings and verdicts thereon, inrolments of deeds, warrants of attorney filacers, and exigenters rolls, containing the entries of writs iſſuing out of their reſpective offices, from the firſt year of king *Henry* the eighth incluſive, down to the preſent time, bound up in diſtinct bundles, aud digeſted in their due order and courſe of time. He is alſo to ſign all copies taken from the rolls, and all records of *Niſi prius* in the ſaid court, and to keep a file of all rules and orders relating to the ſaid rolls. And no exemplifications, (except exemplifications of fines and common recoveries of the preſent or next precedent term) are to be ſealed, unleſs they are firſt ſigned and examined by the clerk of the treaſury. *Mich.* 1654. *And duty.*

The duty of the clerks of the jurats is to make and examine copies of the ſaid records in their reſpective counties; and to amend records on receipt of orders for that purpoſe; to write and examine the jurats of the records of *Niſi prius* in the ſaid court, and to

exemplify verdicts, judgments, and old recoveries.

The duty of the treasury-keeper is to bind up the records in distinct bundles every term, and keep them in their proper order and series of time, and shew them when required.

Filacers.

The present filacers of this court, are,

John Willes for *London* and *Middlesex*. The office is executed by Mr. *John Chambers*.

Thomas Lawes for the counties of *Southampton*, *Wilts*, and town and county of *Southampton*. Both offices are executed at Mr. *John Roberts's* chambers, No. 7. *Clifford's-Inn*.

Mr. *Dawson* for the counties of *Westmorland*, *Cumberland*, *Northumberland*, and town and county of *Newcastle* upon *Tyne*. Office executed by —— *Gale*, *Boswell-court*.

Thomas Sibthorpe for the county and city of *Lincoln*. N°. *Barnard's Inn*.

Mr. *Bard* for the counties of *Essex* and *Hertford*; his deputy is Mr. *Lawrence Gray*, *Cliffords Inn*.

John Staples, at N°. 2. in *Essex Court* in the *Middle Temple*, for the counties of *Gloucester*, *Worcester*, *Hereford* and *Cornwall*, and the cities of *Glouceſter* and *Worceſter*.

Thomas Lee for the county and city of *York*, and county of the same city, and town of *Kingston* upon *Hull*, and county of the same town. The office is executed by him in *Staple's Inn*.

Kig. Peyton for the counties of *Surrey*, *Suſſex*, *Kent* and the city of *Canterbury*. The office is executed by Mr. *Gray*.

John Heberden for the counties of *Somerſet*, *Dorſet*, city of *Briſtol* and town of *Pool*; executes it himſelf at the *K. B.* office.

Lawrence Gray for the counties of *Bedford*, *Berks*, *Buckingham* and *Oxford*.

Mr. *Roberts* for the counties of *Salop*, *Stafford*, *Northampton* and *Rutland*, and city of *Litchfield*.

George Green, N°. 8. *Staples Inn*, for the county of *Norfolk*, city of *Norwich*, and county of the ſame city.

Henrit. Lenton, for the county of *Suffolk*. His deputy is Mr. *Mitchell*, *Cooke's Court*, *Searle Street*.

R. Batten, for the county of *Devon*, city of *Exeter*, and county of the ſame city. This office is executed at N°. 4. *Hare Court*, *Inner Temple*.

William Ward for the counties of *Cambridge* and *Huntingdon*; the office is executed at No. 8. in *Staple's Inn*.

John Keepe for the counties of *Derby*, *Leiceſter*, *Nottingham*, *Warwick*, city of *Coventry*, and town of *Nottingham*. This office is executed by Mr. *Steele* in *Fetter Lane*, near the *Rolls Buildings*.

Francis Gwyn, eſq; for the county of *Monmouth*. The office is executed by Mr. *Warry*, in *New Inn*.

The ſeveral perſons above-named, (except the filacer for *Monmouth*, *vide poſtea fol.* 26) have been appointed, and are ſeiſed of their *Their appointment;*

ſaid offices by grants from the reſpective chief juſtices of the court for the time being, to hold for their natural lives as their freehold.

And duty. Their duty is to make out meſne proceſs upon original writs returnable in this court.

They alſo enter appearances, and file and enter bails, and attend the judges or the court on putting in, and juſtifying bail, and on defendants ſurrendering in diſcharge of their bails; and alſo take affidavits of debts in order to hold the defendants to bail; and affidavits of the ſervice of proceſs; and file bills brought againſt perſons having privilege of parliament, and make out the ſubſequent proceſs thereon before appearance.

Clerk of the warrants, &c. The clerk of the warrants, inrolments, and eſtreats is *Keane Fitzgerald*, eſq; who is

His appointment. admitted into the ſaid office by the lord chief juſtice of this court.

And duty. He files all warrants of attorney upon judgments and iſſues; and all warrants in outlawries, and writs of covenant; and on receiving the warrants of attorney he ſtamps all paper judgments, *Pluries capias*, and writs of covenant, and enters *Ne recipiatur* againſt filing ſuch warrants.

All the common rolls, or records of judgments, and iſſues on trials by *Niſi prius* of every term, are delivered by the ſeveral prothonotaries into this office, the latter end of the ſubſequent term, that the clerk of the warrants may inſpect the ſame, and eſtreat all fines and amerciaments upon ſheriffs, and others, that he ſhall find amongſt the ſaid records, and the rolls are delivered by him

to

to the clerk of the eſſoins. Every deed acknowledged in this court is inrolled in this office, and docketted in books for the benefit of ſearches, and then delivered to the clerk of the eſſoins. The king's ſilver rolls, or poſt-fines of every term are brought the ſubſequent term to this office, and are eſtreated; and the laſt day of every term the clerk of the warrants delivers the eſtreat to the puiſne judge of the court, and attends him to the court of *Exchequer*, when the ſaid judge delivers the eſtreats to the lord chief baron, and the clerk makes oath before the court, that they are rightly eſtreated and examined. All common recoveries are brought to this office from the prothonotaries, and are docketted for the benefit of ſearches. There is a roll alſo kept in this office of the names of all perſons that are admitted attornies of this court, with an account by what judge each attorney was admitted, and at what time and place, and the place of his abode. This roll is wrote over every *Michaelmas* term, in order to keep an account of all forejudgers againſt attornies, that are ſued for debts, or otherwiſe, and of their being reſtored again to their privilege by rule of court, or judge's order. And all perſons have recourſe to the roll without fee or reward. He alſo ſtamps attachments and writs of privilege for attornies. The clerk of the warrants is alſo one of the officers appointed by the ſtatute for the public regiſtring of deeds, *&c.* in the county of *Middleſex*.

The

Clerk of the eſſoins.

His appointment.

His duty.

The office of clerk of the eſſoins is in the appointment of the lord chief juſtice, and has uſually been granted for life. The preſent clerk is Mr. *Wright*.

Eſſoins are entered in this office in all real actions, and other actions, wherein, by the practice of the court, (*b*) eſſoins lie; and in caſe the defendant doth not eſſoin by the time limited by the rules of the court, the plaintiff may enter in this office a *Ne recipiatur* eſſoin. And after an eſſoin is caſt by the defendant, it is the plaintiff's buſineſs to adjourn the eſſoin, in default whereof, and a rule being given for that purpoſe, the defendant may ſign a *Non pros*; which rule and *Non pros* are given in this office on rolls kept for that purpoſe.

In this office all judgments in the court of *Common Pleas* are docketted, purſuant to ſtat. 4 & 5 *W.* & *M. c.* 20. and all rolls belonging to the ſeveral officers of the ſaid court, are mark'd, number'd, and delivered out to them; and when the proper entries are made thereon they are returned into this office, and carried by the ſaid clerk of the eſſoins to the treaſury at *Weſtminſter*, and there bound up in proper bundles. He alſo provides parchment for the ſaid rolls, and the chief juſtice of the court for the time being pays him for the ſame.

(*b*) An *Eſſoin* cannot be caſt by *Attorney*. By *Camden* C. J. 2 Wils. 164.

The

The office of the clerk of the juries is in the gift and nomination of the *Custos brevium* for the time being. The present clerk is Mr. *Thomas Bever*. Mr. *Harrison*, at N°. 8, in *New Inn*, is his deputy. *Clerk of the juries.* *His appointment;*

The duty of this officer is to make out writs of *Habeas corpora juratorum*, for trials of issues in *London* and *Middlesex*, and at the assizes in the country. *And duty.*

The return office and office of inrolment of writs for fines and recoveries, is in the nomination of the three puisne judges of this court, by virtue of an act of parliament made in the 23d year of the reign of queen *Elizabeth*. *Rowland Lickbarrow* is the present clerk of this office. *The return office, and office of inrolment of writs for fines and recoveries.* *Officer's appointment.*

By the statute 23 *Eliz. c.* 3. §. 1. Every writ of covenant, and other writ, whereon any fine shall be levied, the return thereof, the *Dedimus potestatem* for acknowledging such fine, the return thereof, the concord, note, and foot of every such fine, the proclamation, and king's silver, and every original writ of entry in the *Post*, or other writ whereon any common recovery shall be suffered, or passed, the writs of summons *ad warrantizandum*, every warrant of attorney to be had, as well of every demandant and tenant, as vouchee, that shall be extant, and in being, may, upon request of any person, be inrolled, and the inrolment shall be of as good force in law, for so much as shall be inrolled, as the same being extant ought to be. *His duty as clerk of the inrolment office.*

§. 6. There shall be an office for the inrolment aforesaid, which shall be an office for ever, called *The office of inrolment of writs for fines and recoveries*; and the justices of the

the *Common Pleas* (other than the chief juſtice) ſhall have the care and charge of the inrolments aforeſaid, and ſhall enjoy the ſaid office, and the diſpoſition thereof, and carefully ſee to the execution thereof, and in conſideration of their charges, pains, *&c.* ſhall have the ſums following, *viz.* for the inrolment and examination of every fine, and the parts thereof, 6*s.* 8*d.* For the inrolment of the ſeveral parts of a recovery, and examination thereof, 6*s.* 8*d.* For the exemplification of the inrolment of a fine 5*s.* For the exemplification and return of every writ of entry, ſummons *ad warrantizandum*, and warrants, 5*s.* For the ſearch of the rolls for one year 4*d.* And for the copy of one ſheet of paper, containing fourteen lines, 4*d.*

As clerk of the return office. Mr. *Lickbarrow* returns all writs of covenant, entry, ſummons, and ſeiſin, in the names of the ſheriffs of the ſeveral counties, cities, and vills in *England*; and makes regular entries in books, provided at his own charge for that purpoſe, of the counties, cities, vills, parties names, and places where the premiſſes lay which are contained in ſuch writs; and alſo the ſeveral returns of all ſuch writs, except writs of covenant, together with the names of the attornies concerned in proſecuting the ſame, according to the antient method uſed in the ſaid office.

But the applying for inrolments and exemplifications in this office hath been diſuſed many years.

Clerk of the king's ſilver. The clerk of the king's ſilver is *William Daw*, eſq; who was admitted into this office

fice by Sir *Peter King*, late lord chief juſtice of this court, on the ſurrender of *Henry Ludlow*, eſq; his deputy is *Richard Huſſey*. *His appointment;*

This officer claims it to be his duty, to inſpect and ſee that all fines paſſed in his office have regularly paſſed through the ſeveral offices, conformable to the uſage and cuſtom of the court; to enter the whole of all fines, together with the poſt-fine paid thereon, into books which remain in the office as records, for the benefit of ſuch as have occaſion to ſearch for fines; and alſo to indorſe the poſt-fines on the writs of covenant, and ingroſs the entries of all fines on record, with the poſt-fines thereof; which records are eſtreated into the court of *Exchequer*, in order to collect the poſt-fines. He is alſo to ſtop all ſuch fines, againſt the paſſing of which caveats are entered, and file ſuch caveats, with all rules of court, judges orders, and affidavits of the cogniſors being alive, where captions have been taken above twelve months before the fines are brought to his office. *And duty.*

All caveats, and orders for ſtopping any fines, ſhall be renewed every term, and copies thereof left with the clerk of the king's ſilver, for which he is to demand only his antient fee of 3 *s.* 4 *d.* the term. And in default thereof all caveats that ſhall not be ſo renewed ſhall loſe their force and effect. *Paſch.* 29 *Car.* 2.

Where a raſure in the day or year ſhall appear in the captain of a fine, it ſhall not paſs

paſs this office without an *Allocatur* from a judge. *Paſch.* 9 *Annæ.*

Chirographer. The office of chirographer is held by letters patent from the crown, and Sir *George Colebrooke*, bart. is the preſent patentee, under whom *James Garth*, eſq; is appointed ſecondary to officiate in the ſaid office. There is a regiſter and record-keeper belonging to the ſaid office, and the chirographer appoints certain clerks, for the ſeveral counties in *England.*

His appointment;

And duty. The chirographer draws up, and makes out, from all parts of the fine, the final concord, properly called the fine itſelf, and ingroſſes a record thereof, called the chirograph, or foot of the fine; and one other record thereof, called the note of the fine; and from the ſaid chirograph, or foot of the fine, the chiographer's clerks ingroſs two indentures, one whereof is intended for the conuſee, and the other for the conuſor, each of which records and indentures contain the whole of the fine, and are both examined, with all the parts of the fine, by the chirographer's ſecondary; and the parts of the fine, and alſo the records, are openly read and proclaimed in court the ſame term the fine is brought into the chirographer's office, and alſo in the three following terms, the chirographer enters every fine in a publick book, and upon rolls of parchment which are hung up in the court of *Common Pleas* on the firſt day of the next term, after the fine is brought into the ſaid office, and which continue hung up in the court during the whole

whole term, for every perſon's inſpection. The ſame fines are alſo entered in another book kept by the chirographer's regiſter, for publick inſpection, and after proclamation of ſuch fines he ingroſſes the four proclamations on each chirograph, and delivers the ſame with the *Dedimus* and concord of the fine to the *Cuſtos brevium*, to be filed by him; and files the writ of covenant, and the other records of the fine in his own office. Stat. 23 *El. c.* 3. §. 7.

Exigenter. The office of exigenter is executed by Mr. *James Meadowcroft*, but under what appointment I have not been able to learn.

His duty. It is his duty to make exigents and proclamations upon *Pluries capias's* in order to proceed to the outlawry.

Clerk of the outlawries. His appointment; The office of clerk of the outlawries is incident to the office of his majeſty's attorney general, and always executed by ſome perſon appointed by the attorney general for the time being, The preſent clerk of the outlawries is *John Way*, eſq;

And duty. It is the duty of this officer to make out all writs of *Capias utlagatum*, ſequeſtrations of eccleſiaſtical benefices in all perſonal actions in the ſaid court, after the return of the exigent, a ſhort note whereof is entered in a book kept for that purpoſe, expreſſing the plaintiff's and defendant's names, and the defendant's addition, with the cauſe of action and return. And therein are likewiſe made entries of all reverſals of outlawries, and the time thereof, in which books all perſons may ſearch for outlawries, and ſee which

are

are in force or reverſed, and have certificates thereof, in order to diſcharge a ſeizure of lands made by virtue thereof; or ſatisfy any court or perſon touching the ſame, and may have a copy of the *Præcipe* of any outlawry, to plead to, and reverſe the ſame. Inquiſitions taken on ſpecial writs of *Utlegatum* are tranſmitted into this office, and are here exemplified upon rolls ſigned by the clerk of the outlawries, and then carried into the office of the king's remembrancer of the court of *Exchequer*, and there filed of record, and the inquiſitions themſelves and writs of exigent are filed with the *Cuſtos brevium*.

Prothonotary, &c. for Monmouth.

His appointment:

The offices of prothonotary, ſecondary, clerk of the judgments, clerk of the dockets, exigenter, clerk of the juries, filacer and clerk of the reverſals for the county of *Monmouth*, were by his late majeſty king *William* III. by letters patent under the great ſeal, granted to *Francis Gwynn*, eſq; who, or his repreſentative, executes the ſame by Mr. *Warry* his deputy in *New Inn*.

And duty.

He does the ſame duty as the like officers in this court do for the reſt of the counties in *England*.

Seal office.

His appointment;

And duty.

The moſt noble *Auguſtus Henry* duke of *Grafton* is ſeized in fee-tail of this office, and claimeth the receipt of the revenue ariſing for the ſealing of writs, exemplifications, and other things whatſoever ſealed with the ſeal of this court. *Samuel Rogers*, eſq; is his grace's deputy, to take care of the ſaid office, and receive the profits thereof.

The

The office of clerk of the errors is in the nomination of the chief juſtice of the court for the time being, and has been uſually granted by verbal appointment to hold during the pleaſure of the chief juſtice. *Stephen Hough*, eſq; is clerk of the errors to the right honourable the preſent lord chief juſtice. *Clerk of the errors.* *His appointment;*

The clerk of the errors, as deputy or clerk to the lord chief juſtice, has the allowance and receipt of all writs of error brought up on judgments given by this court, and gives certificates thereof, and marks the judgment roll, that a writ of error is allowed, and makes out writs of *Superſedeas* when required, and enters and inrols recognizances of bail taken on writs of error, and makes out writs of *Scire facias* thereon, and gives rules for putting in, and juſtifying bails, and gives certificates of the neglects thereof; and alſo gives rules for plaintiffs in error to certify the records, and makes tranſcripts of the records and judgments, and tranſmits the ſame into the court of *King's Bench*, and enters *Mittiturs* on the rolls, importing that ſuch records are removed into the *King's Bench*, and ſigns, and enters *Non-proſſes* for defaults of plaintiffs in error, certifying their records. He hath alſo the allowance and return of all *Certiorari's* directed to the lord chief juſtice, for certifying records from this court into any other. *And duty.*

The judges clerks are verbally appointed by their reſpective judges, to continue during pleaſure. *Judges clerks.*

The duty of theſe clerks is to ingroſs bail-pieces on writs of *Habeas corpus*; and indorſe *And duty.*

dorſe commitments on the back of the return, and to draw up ſurrenders of perſons ſurrendering themſelves in diſcharge of their bail, and to ingroſs bail-pieces on writs of *Certiorari*; to enter all ſuch bail-pieces, as likewiſe to enter the commitments and ſurrenders in books kept for that purpoſe, (which books perſons are at liberty to inſpect without fee or reward;) to take recognizances of bail acknowledged before their reſpective judges; to read over to the parties the contents of all fines and warrants of attorney for ſuffering common recoveries, and admiſſions of infants to ſue or defend by prochein amy, or guardian, and to write the captions thereon, to ingroſs the returns of writs of *Dedimus poteſtatem* directed to their reſpective judges; to write the *Allocatur* of a fine taken before commiſſioners upon oath of the due caption thereof, and to write the captions of deeds acknowledged in or out of court to be inrolled, and to adminiſter the oaths to perſons making affidavits, or bail juſtifying, and to draw up ſummonſes and orders made by their reſpective judges.

The clerks to the lord chief juſtice make out commiſſions for taking affidavits and ſpecial bails, and file the approbations ſigned by the puiſne judges, in order for ſuch commiſſions and enter the names of the commiſſioners ſo appointed in a book kept for that purpoſe.

Aſſociate at Niſi prius *in*

The office of aſſociate at *Niſi prius* in *London* and *Middleſex* is in the appointment of

the lord chief juſtice, and has been generally granted by parol, to hold during pleaſure only. The preſent aſſociate is Mr. *Thomas Lloyd.*

London and Middleſex. His appointment;

The duty of this officer is to wait on the lord chief juſtice, when he appoints the days of ſittings at *Niſi prius*, and to make copies thereof, which are ſtuck up in the prothonotaries offices, and in *Weſtminſter Hall*, to attend the court during the ſittings, and draw out of the box the names of the jurors, and record their appearances and defaults, and return the ſame. To read the record, and all written evidence, and to take down the minutes of facts and enter the records in a book; record verdicts, return *Poſteas*, and draw up orders of the court of *Niſi prius*, and make copies for each ſide, to attend with the jury to take a private verdict, and draw up and enter the ſame on the *Poſtea*, and make out copies thereof.

And duty.

The office of marſhal at *Niſi prius* in *London* and *Middleſex* is alſo in the nomination of the lord chief juſtice, and has been time immemorial granted by parol appointment, to hold during the pleaſure of the lord chief juſtice. The preſent marſhal is *Stephen Hough*, eſq.

Marſhal at Niſi prius *in* London *and* Middleſex. *His appointment;*

This officer is to attend the lord chief juſtice of this court, at all ſuch times as his lordſhip ſits to try iſſues depending in this court, by writ of *Niſi prius*, either in the county of *Middleſex* or city of *London*. He enters the names of all cauſes ſet down to be tried for the ſaid city and county, in a book

And duty.

kept and provided by him for that purpoſe, which he carries down with him every day in term-time, to *Weſtminſter*, that all attornies may have recourſe to it to enter their cauſes, to inſpect and ſee what cauſes are entered, and at proper times to enter *Ne recipiaturs*; and in the afternoon this book is kept at the lord chief juſtice's chambers for the ſame purpoſe. During the time appointed for trials in the ſaid cauſes he perſonally attends the court during the whole time of their ſitting, to receive the records and writs, and mark them. The marſhal firſt calls the name of the cauſe, and then delivers up the record to the lord chief juſtice, and ſits under him, to be ready, upon all occaſions, to receive his commands, to receive and withdraw records and writs, and to mark any that are left untried, as *Remanets* to be tried at the next ſitting.

Cryer at Niſi prius *in* London *and* Middleſex.

His appointment;

The office of cryer at *Niſi prius* in *London* and *Middleſex* is alſo in the gift of the lord chief juſtice for the time being, and has been uſually granted by parol appointment, to hold during pleaſure. Mr. *Avis* is cryer to the preſent lord chief juſtice.

And duty.

His duty is to call the jurors, and ſwear them, and all witneſſes produced on ſuch trials.

Chief proclamator.

His appointment;

Heneage Walker, eſq; hereditary proclamator of this court, granted to *John Walker*, eſq; the office of mareſchal proclamator, and barrier of this court, with all fees, *&c.* to hold to him and his heirs for ever. There are four perſons who act as cryers of the court,

one

one of which is alſo court-keeper, and another porter of the court: Which cryers, court-keeper, and porter, are deputies to the chief proclamator.

The duty of the proclamator and barrier is by himſelf, or deputies, to attend the court of *Commons Pleas* at *Weſtminſter*, and make proclamations, *&c.* *And duty.*

The cryers are appointed by deputation from the chief proclamator. *The four cryers Their appointment;*

Their duty is to attend the court, to adminiſter the oaths to juries, witneſſes, bails, and perſons making affidavits; to hand rules affidavits, *&c.* from the ſerjeants to the proper officers, to bring records into court as they are wanted, to call attornies on bills being filed againſt them, to take recoveries from the bar, and get them entered in the proper prothonotaries offices to which they belong, proclaim the eſſoins on the return-days, make proper adjournments, *&c.* *And duty.*

The court-keeper is appointed by the chief proclamator. *Court-keeper. His appointment;*

His duty is to take care of the court, and that the tapeſtry and cuſhions be kept clean, the court waſhed, matted and cleaned, and to take care of the acts of parliament, and other books made uſe of in court. *And duty.*

The porter of the court holds his place by the appointment of the chief proclamator. *Porter of the court. His appointment;*

His duty is to attend the judges in court, hang out of the fines every day, take care of *And duty.*

them; and to do other buſineſs as occaſion requires.

Warden of the Fleet
His appointment;
And duty.

The warden of the *Fleet* priſon is *John Eyles*, eſq; appointed by letters patent to hold during pleaſure.

His duty is to receive, and have the cuſtody of all priſoners committed by this court to the *Fleet* priſon.

Clerk of the papers and rules of the Fleet priſon.
His appointment;
And duty.

The preſent clerk of the papers and rules of the *Fleet* priſon is Mr. *Low*, who holds his place by grant or appointment of the warden of the *Fleet*.

It is his buſineſs to receive and enter, in books kept for that purpoſe, the commitments of priſoners committed to the ſaid priſon by this court, to enter declarations delivered to the turnkey of the priſon againſt priſoners, and to enter and file the diſcharges of priſoners, and to give certificates thereof, and return writs of *Habeas corpus*, and other writs directed to the warden, and enter the ſame in a book kept for that purpoſe, and alſo to give certificates of charges againſt priſoners, and certificates of day-rules granted to priſoners by the court.

Tipſtaffs.
Their appointment,

There are two tipſtaffs attendant on this court, who are admitted by deputation from the warden of the *Fleet*.

And duty.

They attend the judges whilſt ſitting in court, and in the afternoon at their chambers, and out of term they attend there morning and afternoon. One of them alſo attends the chief juſtice at the ſittings of *Niſi prius* at *Weſtminſter* and in *London*, and on the circuits. Their duty is to receive all priſoners

priſoners committed in court, or at a judge's chambers, and from thence to carry them to the *Fleet* priſon, and deliver them to the turnkey there; and alſo to bring up priſoners to the court, or before a judge, on a *Habeas corpus*, or rule of court for that purpoſe.

Commiſſioners for taking affidavits, concerning matters in this court, to be appointed by the judges.

The judges of this court, or any two of them, whereof the chief juſtice to be one, ſhall and may, by one or more commiſſion or commiſſions, under the ſeal of this court, from time to time, as need ſhall require, impower what and as many perſons as they ſhall think fit and neceſſary in all and every the ſeveral ſhires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every ſuch affidavit and affidavits as any perſon or perſons ſhall be willing and deſirous to make before any of the perſons ſo impowered, in or concerning any cauſe, matter, or thing depending, or any wiſe concerning any of the proceedings in the ſaid court, as maſters of *Chancery* in extraordinary do uſe to do.

And judge of aſſize in his circuit may take ſuch affidavit.

And any judge of aſſize in his circuit may take and receive any affidavit or affidavits as any perſon or perſons ſhall be willing and deſirous to make before him in or concerning any cauſe, matter or thing depending or in any wiſe concerning any proceedings in the ſaid court: Which ſaid affidavits, taken as aforeſaid, ſhall be filed and then read and made uſe of in the ſaid court to all intents and purpoſes as other affidavits taken in the ſaid court now are; and

Affidavit to be filed, and then read and uſed, &c.

all and every affidavit and affidavits, taken as aforeſaid, ſhall be of the ſame force as affidavits taken in the ſaid court now are; and all and every perſon and perſons for ſwearing him, her, or themſelves in ſuch affidavit or affidavits, ſhall incur and be liable unto the ſame penalties as if ſuch affidavit or affidavits had been made and taken in open court. *Stat.* 29 *Car.* 2. *c.* 5. §. 2.

Penalty of perjury in ſuch affidavits.

Fee for taking ſuch affidavits.

For the taking of every ſuch affidavit, the perſon or perſons ſo impowered and taking the ſame, ſhall for ſo doing receive only the ſum or fee of 12 *d.* and no more. *Same Stat.* §. 3.

Commiſſioners for taking bails in any ſuit in this court, to be appointed by the judges.

The Juſtices of this court or any two of them, whereof the chief juſtice to be one, may by one or more commiſſion or commiſſioners under the ſeal of this court, from time to time, as need ſhall require, impower ſuch and ſo many perſons, other than common attornies and ſolicitors, as they ſhall think fit and neceſſary, in all and every the ſeveral ſhires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every ſuch recognizance or recognizances of bail or bails, as any perſon or perſons ſhall be willing and deſirous to acknowledge or make before any of the perſons ſo impowered in any action or ſuit depending in this court, in ſuch manner and form, and by ſuch recognizance or bail piece as the juſtices of this court have uſed to take the ſame, which ſaid recognizance or recognizances of bail or bail-piece ſo taken as aforeſaid

Recognizances to be tranſmitted to a judge of the court.

aforeſaid ſhall be tranſmitted to ſome or one of the juſtices of this court, who upon affidavit made of the due taking of the recognizance of ſuch bail or bail-piece, by ſome credible perſon preſent at the taking thereof, ſuch juſtice ſhall receive the ſame upon payment of ſuch fees as have been uſually received for the taking of ſpecial bails by the juſtices clerks, and other the officers of this court; which recognizance of bail or bail-piece ſo taken and tranſmitted, ſhall be of the like effect as if the ſame were taken *de bene eſſe*, before any of the ſaid juſtices; for the taking of every which recognizance or recognizances of bail or bail-piece, the perſon or perſons ſo impowered ſhall receive only the ſum or fee of 2 *s.* and no more. *Stat.* 4 *W. & M. c.* 4. §. 1.

Affidavit of the due taking, &c.

Fee for taking, &c.

The juſtices in this court ſhall make ſuch rules and orders for the juſtifying of ſuch bails, and making the ſame abſolute, as to them ſhall ſeem meet; ſo as the cognizor or cognizors of ſuch bail or bails be not compelled to appear in perſon in this court to juſtify him or themſelves: But the ſame may and is hereby directed to be determined by affidavit or affidavits taken before the ſaid commiſſioners, who are hereby impowered and required to take the ſame, and alſo to examine the ſureties upon oath touching the value of their reſpective eſtates; unleſs the cognizor or cognizers of ſuch bail do live within the cities of *London* and *Weſtminſter*, or within ten miles thereof. *Same Stat.* §. 2.

Judges to make rules for juſtifying, &c.

The ſame to be by affidavit taken before a commiſſioner.

Unleſs, &c.

Any

Any judge of aſſize in his circuit may take ſuch bail.

Any judge of aſſize in his circuit may take and receive all and every ſuch recognizance and recognizances of bail or bails, as any perſon ſhall be willing and deſirous to make and acknowledge before him, which being tranſmitted in like manner as aforeſaid, ſhall (without oath) be received in manner as aforeſaid, upon payment of the uſual fees. *Same Stat.* §. 3.

Acknowledging bail in the name of any other not privy or conſenting, felony.

Every perſon who ſhall acknowledge, or procure to be acknowledged, any fine, *&c.* recognizance or recognizances, bail or bails, *&c.* in the name of any other perſon not privy or conſenting to the ſame, and being thereof convicted, ſhall be adjudged to be a felon, and ſuffer death, *&c.* without benefit of clergy. *Stat.* 21 *Jac.* 1. *c.* 26. 1 *H. H. P. C.* 696. *Et vide Stat.* 4 *W. & M. c.* 4. §. 4. Whereby perſonating another before thoſe who have authority by that act to take bail, ſo as to make him liable to the payment of any ſum of money in that ſuit or action, is made felony.

Attornies of the court.

No one to act as an attorney, unleſs ſerved five years clerkſhip.

BY the ſtatute (*a*) 2 *Geo.* 2. *c.* 23. *ſect.* 5. no perſon ſhall be admitted to act as an attorney, ſue out any proceſs, or defend any action in this court, unleſs he ſhall have been bound by contract in writing to ſerve as a

(*a*) Perpetuated by *Stat.* 30 *Geo.* 2. *c.* 19. *ſect.* 75.

clerk

clerk for five years to an attorney duly admitted, as by the ſtatute is directed, and for the ſaid term of five years ſhall have continued in ſuch ſervice, and then be examined, ſworn, admitted and inrolled.

If his maſter ſhall die, or the contract be vacated, before the five years are expired, then to ſerve the remainder of the five years with another attorney.

If any attorney, with whom any perſon ſhall be bound by contract in writing to ſerve as aforeſaid, ſhall die before the expiration of ſuch five years; or if ſuch contract ſhall by mutual conſent be vacated, or ſuch clerk be legally diſcharged by rule or order of court before the expiration of ſuch five years, then if ſuch clerk ſhall by (*b*) contract in writing ſerve as a clerk to ſome other attorney, admitted as aforeſaid, during the remainder of the ſaid five years, ſuch ſervice ſhall be as effectual as if he had ſerved five years to the perſon to whom he was originally bound. *Stat.* 22 *G. c.* 46. *ſect.* 9.

Judges to examine his fitneſs and capacity before admiſſion.

The judges, before they admit ſuch perſon, are to inquire touching his fitneſs and capacity, and if thereby ſatisfied, and not otherwiſe, are to adminiſter to him, in open court, the oath after mentioned, and cauſe him to be admitted an attorney, and his name to be inrolled, without fee or reward, except 1 *s.* for adminiſtring the oath. *Same Stat. ſect.* 6.

Mr. *Rayner*, in his readings on *ſect.* 11. of this ſtatute, ſays that Mr. *Barrington's* obſervation "that notwithſtanding *ſtat.* 4

(*b*) Though without entring into any new articles. *Stat.* 22 *Geo.* 2. *c.* 46. §. 15.

Hen.

Hen. VI. chap. 18. it is not the modern practice to examine attornies before admittance," is not true, and asserts that no attorney is admitted at this day, without a previous (*c*) examination; but whether by virtue of 4 *Hen.* VI. chap. 18. or 2 *Geo.* II. chap. 23. he will not take upon him to say. *Rayn. Read.* 2 *Geo.* II. chap. 23. p. 45.

The oath.

I *A. B.* do swear, That I will truly and honestly demean myself in the practice of an attorney according to the best of my knowledge and ability.

So help me God.

id. sect. 1.

A Quaker on taking his solemn affirmation, may be admitted an attorney.

Any person being one of the people called Quakers, having served a clerkship with an attorney or solicitor, and being qualified as by statute 2 *Geo.* 2. *c.* 23. is required, may, on taking his solemn affirmation instead of the oath by the said act directed, before such judges, and others who are to administer the said affirmation, be admitted and inrolled as an attorney or solicitor, as if he had taken the said oath. *Stat.* 12 *Geo.* II. *c.* 13. §. 8.

Attornies to be inrolled.

The clerk of the warrants of the *Common Pleas* is, without fee or reward, to inrol the

---

(*c*) The Judge inquires into the fitness of the attorney, by asking him a few trivial law questions, the answers to which, generally convince him of the abilities of the clerk, as much as reading the *neck* verse (formerly necessary, in order to obtain benefit of clergy) did convince the court and mankind of the learning of the culprit. *Rayn. Read.* 108.

name

name of every perſon who ſhall be admitted an attorney of this court, purſuant to this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided for that purpoſe, to which all perſons ſhall have recourſe without fee or reward. *Stat.* 2. *Geo.* 2. *c.* 23. §. 18.

No attorney to have more than two clerks at one time.

No attorney ſhall have more than two clerks at one and the ſame time, who ſhall be bound by contract in writing. *Same ſtat.*

Prothonotaries may have three clerks.

The prothonotaries of this court may have three clerks, and at one and the ſame time, and no more; and ſuch clerks having ſerved five years may be admitted, *&c.* in the ſame manner as any perſon may, who ſhall have ſerved a clerkſhip to a ſworn attorney for five years. *Same ſtat.* §. 15.

Attorney, with conſent of attorney of another court, may practice in ſuch court.

Any perſon ſworn, admitted, and inrolled an attorney of this court, with conſent in writing, and in the name of any attorney of any other court of record at *Weſtminſter*, *&c.* may ſue out any writ, or commence or defend any action in ſuch court, notwithſtanding ſuch perſon be not ſworn or admitted an attorney in ſuch coutt, *Same ſtat.* §. 10.

Attorney of *C. B.* may by this clauſe of the ſtatute carry on proceedings in the court of great ſeſſions of *Wales*, in the name of an attorney of that court, and declare for buſineſs and fees. *Barnes* 160.

Attorney permitting thoſe that are not, to act in his name, diſabled to practice.

If any ſworn attorney of this court ſhall knowingly and willingly permit or ſuffer any other perſon to ſue out any writ, or commence or defend any action, in his name, not being a ſworn attorney or a ſworn ſolicitor

citor in *Chancery*, &c. and ſhall be thereof convicted, he ſhall, from the time of ſuch conviction, be diſabled to practice, and his admittance be void. *Same ſtat.* §. 17.

Attorney may be admitted a ſolicitor.

A ſworn attorney of this court may be ſworn, admitted and inrolled a ſolicitor in all or any of the courts of equity without any fee for the oath, or any ſtamp, if the maſter of the rolls, *&c.* ſhall, on examining, be ſatisfied that ſuch attorney is duly qualified to be ſo admitted. *Same ſtat.* §. 20.

Attorney of the King's Bench not to be admitted of C. P. without a new ſtamp.

An attorney of the *King's Bench* applied in the treaſury to be admitted an attorney of this court without ſtamps, but upon looking into the above ſtatute of 2 *Geo.* 2. *c.* 23. wherein no proviſion is made for an attorney of one court to be admitted an attorney of another without duty, though there is a proviſion for ſolicitors of one court of equity, *and for attornies to be admitted ſolicitors without duty*, the judges refuſed to admit him without payment of the duty. *Barnes* 38.

2 *Geo* 2. *c.* 23. §. 20.

No attorney to commence any action for fees, &c. until a month after a bill delivered and ſigned.

No attorney of this court ſhall commence any action for recovery of any fees, charges, or diſburſements, until one month after he ſhall have delivered to the party to be charged therewith, or left for him at his dwelling-houſe, or laſt place of abode, a (*d*) bill of ſuch fees, charges and diſburſements, in a com-

(*d*) That ſo the client may have an opportunity of looking into it before he is run to any further expence, *Pract. Reg. C. P.* 36. *Rep. & Caſ. Pract. C. P.* 27. Taxation cannot regularly be applied for before bill delivered. *Barnes* 36, 243.

mon

mon legible hand, and in the *Engliſh* tongue, (except law terms, and the names of writs) and in words at length (except times and ſums) ſubſcribed (*e*) with the proper hand of ſuch attorney [ſince by *ſtat.* 12 *Geo.* 2. a bill may be wrote with ſuch abbreviations as are commonly uſed in the *Engliſh* language;] and upon application of the party chargeable by ſuch bill, or any other in that behalf authoriſed, unto any judge of the court, *&c.* where the buſineſs, or the greateſt part thereof in amount or value was tranſacted; and upon ſubmiſſion of the party, or other perſon authoriſed as aforeſaid, to pay the whole, that upon taxation ſhall appear due to ſuch attorney, the judge, *&c.* is required and impowered to refer the bill, and the whole of ſuch attorney's demands thereupon (although no action be depending touching the ſame) to be taxed, without any money (*f*) being brought into court. And if the attorney, having due notice, ſhall refuſe to attend ſuch taxation, the officer may proceed *ex parte* (pending which reference no action ſhall be brought;) and upon ſuch taxation the party ſhall forthwith pay to the attorney the whole that ſhall be found due, and in default be liable to an attachment or proceſs of

And on application of the party chargeable by ſuch bill.

And ſubmiſſion to pay what ſhall appear due on taxation.

The bill to be referred to be taxed.

Without bringing money into court.

No action to be brought pending the reference.

On taxation the party to

(*e*) Co. Caſ. 60.

(*f*) Lord chief juſtice *King* firſt introduced the practice of bringing money into court, becauſe the party being ſtopped from ſuing at law, he thought it reaſonable that the attorney ſhould have ſecurity for his money: this was previous to this ſtatute. See *Moſeley* 68. *pl.* 40.

contempt,

pay what ſhall be found due.

And if attorney found to be over paid;

then to refund.

contempt, or other proceeding at the election of the attorney. And if upon ſuch taxation it ſhall be found, that ſuch attorney has been overpaid, then the attorney ſhall forthwith pay to the party all ſuch money as the officer ſhall certify to have been ſo overpaid; and in default ſhall in like manner be liable to attachment, or proceſs of contempt, or other proceeding, at the election of the party.

If bill taxed be leſs by a ſixth than bill delivered, the attorney to pay the coſts of taxation, aliter at the diſcretion of the court.

And the court is to award coſts of taxation according to the event thereof, (*viz.*) if the bill taxed be leſs by a ſixth part, than the bill delivered, the attorney is to pay the coſts; if not leſs by a ſixth part, the court at diſcretion ſhall charge the attorney or client according to the reaſonableneſs or unreaſonableneſs of the bill. *Same ſtat.* §. 23.

Not to extend to any bill of fees between one attorney and another.

Nothing in the ſaid act contained ſhall extend to any bill of fees, charges and diſburſements, due from one attorney or ſolicitor to any other attorney or ſolicitor, or clerk in court, but every ſuch attorney, ſolicitor or clerk in court, may uſe ſuch remedy for recovery of his fees, charges and diſburſements, againſt ſuch other attorney or ſolicitor, as he might have done before the making the ſaid act. *Stat.* 12. *Geo.* 2. *c.* 13. §. 6.

Nor to conveyancing buſineſs.

An attorney's bill for conveyancing buſineſs only, is not liable to be taxed otherwiſe than by a jury upon a *quantum meruit*. *Barnes* 41, 42. *Bul. Ni. Pri.*

After an attorney's death his bill not to be taxed.

After an attorney is dead his bill is not liable to be taxed. *Rep. & Caſ. Pract. C. P.* 58. *Barnes* 42. *S. P.* 119, 122.

The

The court will not order that an attorney shall deliver his bill, and that the same shall be taxed, on one and the same motion, they being distinct matters, and the latter part may prove fruitless; the bill may be reasonable, and no occasion to tax it; the motion must be for the attorney to deliver his bill, and then, if there be occasion, the client may move to have it taxed; but the more usual way is to summons the attorney before a judge; and if the judge's order be disobeyed, to move the court, that the order may be made a rule of court, and then proceed to an attachment in case of further contempt.

Of application to tax an attorney's bill.

Any person in his own name, or in the name of any other, suing out any writ, or commencing or defending any action, in any of the courts of law or equity, mentioned in the said act as attorney or solicitor, in expectation of any gain, fee or reward, without being admitted, shall forfeit 50*l.* to the use of the person who shall prosecute, and be made incapable to maintain any action for any fee, reward or disbursement, on account of prosecuting or defending any such action. *Stat.* 2 *Geo.* 2. *c.* 23. §. 24.

Any person practising as an attorney not being admitted forfeits 50*l.*

No attorney who shall be a prisoner in any gaol or prison, or within the limits, rules or liberties of any gaol or prison, shall, during his confinement, in his own name, or the name of any other, sue out any writ or process, or commence or prosecute any action or suit, and all proceedings in such action or suit shall be void and of no effect;

No attorney being a prisoner to commence or prosecute any action.

Such attorney to be ſtruck off the roll.

and ſuch attorney ſo commencing or proſecuting any action or ſuit as aforeſaid, ſhall be ſtruck off the roll, and be incapacitated from acting as an attorney for the future; and any attorney permitting and impowering any ſuch attorney as aforeſaid, to commence or proſecute any action or ſuit in his name, ſhall be ſtruck off the roll, and be incapacitated from acting as an attorney for the future. *Stat.* 12 *Geo.* 2. *c.* 13. §. 9.

As alſo any other attorney permitting ſuch attorney to uſe his name.

Not to extend to ſuits commenced before the confinement of ſuch attorney.

This not to extend to prevent any attorney ſo confined as aforeſaid, from carrying on or tranſacting any ſuit or ſuits commenced before the confinement of ſuch attorney. *Same Stat.* §. 10.

Suing on a bail bond given in an action commenced before the impriſonment, is but a continuance of the original ſuit.

After an action commenced by an attorney he becomes a priſoner, then the bail bond is aſſigned, and he, being ſtill a priſoner, commences an action on the bail bond; this has been held to be a continuance of the original ſuit commenced before the attorney became a priſoner. 2 *Barnes* 46.

Attornies priſoners may defend, tho' not proſecute ſuits.

It has alſo been held, that the above act, diſqualifying attornies who are priſoners from practiſing, relates only to the proſecuting, and not to the defending ſuits. *Barnes* 263.

Every perſon bound clerk to cauſe an affidavit to be made of the execution of the articles, ſpecifying the names and places of abode of the parties, date, &c.

Every perſon, who after 1 *July* 1749, ſhall be bound by contract in writing to ſerve as a clerk to any attorney of this court, as by *Stat.* 2 *Geo.* 2. is directed, ſhall within three months after the date of ſuch contract, cauſe an affidavit to be made of the actual execution of ſuch contract by ſuch attorney, and the perſon ſo bound, ſpecifying the name of ſuch attorney, and of the perſon ſo bound,

and

and their places of abode reſpectively, together with the day of the date of ſuch contract; and ſuch affidavit ſhall be filed within the time aforeſaid in this court, with the officer after mentioned, or his deputy, who ſhall make and ſign a memorandum or mark of the day of filing ſuch affidavit, at the back or bottom thereof. *Stat.* 22 *Geo.* 2. *c.* 46. §. 3.

Affidavit to be filed, and the day of filing marked thereon.

No perſon ſhall be admitted an attorney before ſuch affidavit ſo marked ſhall be produced, and openly read in court. *Same ſtat.* §. 4.

No perſon to be admitted an attorney, till affidavit read in court.

In this court the clerk of the warrants, or his deputy, ſhall be the proper officer for filing ſuch affidavits. *Same ſtat.* §. 5. And ſhall keep a book, wherein ſhall be entered the ſubſtance of ſuch affidavit, ſpecifying the names and places of abode of every ſuch attorney and clerk, and of the perſon making ſuch affidavit, with the date of the contract, and the days of making and filing ſuch affidavit, and may take, at the time of filing ſuch affidavit, 2 *s.* 6 *d.* for his aforeſaid trouble, which book may be ſearched *gratis.* *Same ſtat.* §. 6.

Clerk of the warrants to file ſuch affidavits, and enter ſubſtance thereof in a book.

Fee 2 *s.* 6 *d.*

Book to be ſearched gratis.

No attorney ſhall have, take, or retain any clerk, who ſhall become bound by contract in writing as aforeſaid, after ſuch attorney ſhall have diſcontinued or left off, or during ſuch time as he ſhall not actually practiſe as, or carry on the buſineſs of an attorney. *Same ſtat.* §. 7.

No attorney to take ſuch clerk after he has diſcontinued buſineſs.

L. had ſerved an apprenticeſhip to *G.* a ſcrivener in the city, and alſo a ſworn attorney of the court of *Common Pleas:* By the

Service to a ſcrivener tho' alſo an attorney not good.

tenor of the articles *G.* covenanted to inſtruct *L.* in the art and myſtery of a ſcrivener; and it appeared that *G.* during the term of five years ſpecified in the articles, had never practiſed as an attorney, but acted as a ſcrivener only. Application was made to the lord chief juſtice, and in the treaſury, that *L.* might be ſworn an attorney, which was refuſed, he not having ſerved as *clerk* to an *attorney*; but as *apprentice* to a *ſcrivener.*

N. B. There was formerly the ſame determination in the caſe of a young man who had ſerved Mr. *Metcalfe*, an attorney and ſcrivener in *Wood-ſtreet*; *Metcalfe*, during the term of five years ſpecified in the indentures of apprenticeſhip, practiſed in both capacities; but the covenant in the articles being to inſtruct the apprentice in the art of a ſcrivener only, the judges refuſed to admit him as an attorney. *Barnes* 39, 40.

Every perſon ſo bound, to be during the whole time actually employed by ſuch attorney.

Every perſon bound by contract in writing to ſerve any attorney as by the ſaid act is directed, ſhall during the whole time and term of ſervice ſpecified in ſuch contract continue, and be actually employed by ſuch attorney, or his agent, in the proper buſineſs, practice or employment of an attorney. *Same ſtat.* §. 8.

If before the expiration of the time the attorney die, &c. or the clerk be diſcharged by, &c.

Provided if any ſuch attorney, to or with whom any ſuch perſon ſhall be ſo bound, ſhall happen to die before the expiration of ſuch term, or diſcontinue or leave off his practice, or if ſuch contract ſhall by mutual conſent of the parties be cancelled, or ſuch clerk ſhall be legally diſcharged by rule of the court before

before the expiration of ſuch term, and the ſaid clerk ſhall in any of the ſaid caſes be bound by another contract or contracts in writing to ſerve, and ſhall accordingly ſerve in manner beforementioned, as clerk to any other ſuch practiſing attorney or attornies as aforeſaid, during the reſidue of the ſaid term of five years, ſuch ſervice ſhall be deemed and taken to be as good, effectual and available, as if ſuch clerk had continued to ſerve as a clerk for the ſaid term, to the ſame perſon to whom he was originally bound, ſo as affidavit be duly made and filed of the execution of ſuch ſecond contract or contracts, within the time and in like manner, as is before directed concerning ſuch original contract. *Same ſtat.* §. 9.

and be bound to ſerve for the remainder of the time,

ſuch ſervice to be good.

So as affidavit be made, &c. of the execution of the articles.

Every perſon who ſhall become bound as a clerk as aforeſaid, ſhall, before he be admitted an attorney, cauſe an affidavit of himſelf, or ſuch attorney to whom he was bound as aforeſaid, to be duly made, and filed with the officer before appointed, that he hath actually and really ſerved and been employed by ſuch practiſing attorney, to whom he was bound as aforeſaid, or his agent during the ſaid whole term of five years. *Same ſtat.* §. 10.

Before admittance of an attorney, affidavit to be made and filed of actual ſervice.

If any ſworn attorney ſhall act as agent for any perſon or perſons not duly qualified to act as an attorney or ſolicitor as aforeſaid, or permit or ſuffer his name to be any ways made uſe of upon the account, or for the profit of any unqualified perſon or perſons, or ſend any proceſs to ſuch unqualified perſon

Attorney acting as agent or permitting his name to be uſed for or ſending any proceſs to any unqualified perſon, thereby

to enable him to appear or act as an attorney, to be ſtruck off the roll.

ſon or perſons, thereby to enable him or them to appear, act or practice in any reſpect as an attorney or ſolicitor, knowing him not to be duly qualified as aforeſaid, and complaint ſhall be made thereof in a ſummary way to the court, from whence any ſuch proceſs did iſſue, and proof made thereof upon oath to the ſatisfaction of the court, that ſuch ſworn attorney had offended therein as aforeſaid, then every ſuch attorney ſo offending ſhall be ſtruck off the roll, and for ever after diſabled from practiſing as an attorney or ſolicitor; and in that caſe, and upon ſuch complaint and proof made as aforeſaid, it ſhall be lawful for the ſaid court to commit ſuch unqualified perſon, ſo acting or practiſing as aforeſaid, to the priſon of the ſaid court, for any time not exceeding one year. *Same ſtat.* §. 11.

And the unqualified perſon to be committed.

None but attornies to practiſe at general or quarter-ſeſſions.

No perſon ſhall act as a ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter-ſeſſions of the peace, either with reſpect to matters of a criminal or of a civil nature, unleſs ſuch perſon ſhall have been heretofore admitted an attorney of one of the courts of record at *Weſtminſter*, and duly inrolled purſuant to *ſtat.* 2 *Geo.* 2. *c.* 23. or be hereafter admitted an attorney and inrolled as aforeſaid, purſuant to this act, or ſuch other law as ſhall be then in being, and unleſs ſuch perſon ſhall continue ſo entered on the roll at the time of ſuch his acting in the capacity aforeſaid; but every perſon, who ſhall ſo act, not being admitted and inrolled as aforeſaid, ſhall be ſubject to a penalty

nalty of 50*l.* to be recovered by action of debt, bill, &c. by any perſon, who ſhall ſue for the ſame, within 12 months after the offence committed, with treble coſts of ſuit. *under penalty of* 50*l.*

And if any attorney ſhall permit any perſon, not being admitted and inrolled as aforeſaid, to make uſe of his name in the courts of general or quarter-ſeſſions as aforeſaid, ſuch attorney ſhall be ſubject to the like penalty of 50 *l.* to be recovered in manner aforeſaid. *Same ſtat.* §. 12. *No attorney to permit an unqualified perſon to uſe his name at the ſeſſions under the like penalty.*

By *ſtat.* 2 *Geo.* 2. *c.* 23. §. 22. "Every proceſs for arreſting, and every writ of execution, or ſome label annexed, and every warrant upon ſuch proceſs, ſhall, before ſervice or execution, be ſubſcribed or indorſed with the name of the attorney, clerk in court or ſolicitor, by whom ſuch proceſs, &c. ſhall be ſued forth; and where ſuch attorney, &c. ſhall not be the perſon immediately imployed, then alſo with the name of the attorney ſo immediately imployed: and every copy of any writ ſerved upon any defendant ſhall before ſervice be ſubſcribed with the name of the attorney immediately imployed." *Name of attorney to be written on every writ.*

Motion to ſtay proceedings, becauſe the copy of the writ with which the defendant was ſerved, had not attorney's name to it. *Pract. Reg. C. P.* 440. *No attorney's name to copy of writ.*

Rule to ſhew cauſe why proceedings ſhould not be diſcharged with coſts. The objection was, that no attorney's name was ſet to the ſheriff's warrant as required by act of parliament; but by the court; the warrant is not void, the act of parliament is directory *Proceedings not to be diſcharged, tho' attorney's name is not to the ſheriff's warrant.*

only; the ſheriff is blameable, but the party muſt not ſuffer for his default. *Barnes* 412. *Pract. Reg. C. P.* 441.

Attorney's name to the writ, tho' not to the warrant, ſufficient.

Motion that proceeding might be ſtayed, the attorney's name not being to the warrant made by the ſheriff, tho' it was to the writ on which the warrant was made. Rule to ſhew cauſe. The court (*Forteſcue A.* abſent) ſaid, that as the attorney's name was to the writ, it was ſufficient, but that till the *Stat.* 12 *Geo.* 2. *c.* 13. the not inſerting the name of the attorney in the warrant was bad, and thought ſome former determinations on this head, not declaring the proceſs void, were quite wrong. *Pract. Reg. C. P.* 442.

Writ not void tho' without an attorney's name.

Motion to ſtay proceedings becauſe no attorney's name was ſet to the writ, denied. *Barnes* 407. *Pract. Reg. C. P.* 441. *Rep. & Caſ. Pract. C. P.* 102.

Proceſs delivered without filacer's name.

Motion to ſtay proceedings upon proceſs delivered without *Filacer*'s name being put thereto; court ſaid the act of parliament did not require it; ſo no rule was granted. *Rep. & Caſ. Pract. C. P.* 106.

Provided that nothing herein contained ſhall extend to deprive the attornies of the dutchy of *Lancaſter*, or of the courts of great ſeſſions in *Wales*, or of the counties palatine of *Cheſter*, *Lancaſter* and *Durham*, from acting within their reſpective juriſdictions. *Same ſtat.* §. 13.

By ſtatute 17 *Geo.* 3. *c.* 37. further time is given for the filing affidavits of the execution of contracts of clerks to attornies, to *Mich.* term. 1777.

An

An attorney that has not been attending his employment in this court by the ſpace of one year, unleſs hindered by ſickneſs, ſhall not be allowed his privilege of an attorney. *Mich.* 1654.

Attorney not attending, &c. to have no privilege.

It is obſervable, that the above rule or order of court, was made in times very unfavorable to perſonal as well as public liberty, though that ſpecious pretence was given out and received as the ſole motive for cauſing that extraordinary *Epocha*, in the hiſtory of this country, called the uſurpation.

Obſervations on rule of Mich. *term*, 1654, *touching the privilege of an attorney being free from arreſt.*

A rule therefore made at ſuch a period of anarchy and lawleſs confuſion ought not, in my humble opinion, to be conſidered as ſufficient authority, or indeed as any authority at all, much leſs as the ground and reaſon for over-ruling the privilege in queſtion; will it not be too much to eſtabliſh this remnant of lawleſs power, unſanctified by any ſubſequent act, either of a court of juſtice, or of the legiſlature, (without one or other of which authorities, I believe it will be difficult to produce an approved precedent of any rule, order, act, judicial or legal, being adopted, or even countenanced by courts of juſtice at this day, eſpecially in a matter of perſonal privilege, and ſuch two as may eventually affect the property or intereſt of every individual ſubject of this kingdom.)

And indeed at the time, when the above old and diſuſed rule was conſidered as authority, it ſeems to have militated, even then, with a much more ſuperior authority, viz. *ſtat.* 1 *Hen.* V. chap. 4. whereby no under-

ſheriff

ſheriff may practice as an attorney, during his employment in the ſaid office, upon pain of excluſion, from being an attorney, and from being re-admitted ever after.

So that if a gentleman of the profeſſion acts now-a-days as under-ſheriff, he runs the riſque of not only being ſtruck off the roll of attornies, but alſo of being precluded of all poſſible chance of being reſtored, at any future period of his life, by any means whatever; for if he does practice within the year of his being under-ſheriff, *ſtat. Hen.* V. obliges the judges to ſtrike him off the roll; and if he does not practice for a year, they declare themſelves authorized ſo to do, by the practice of the court, under the above old, diſuſed, and I may add, abuſed rule of 1654.

The judges in the time of princeſs *Elizabeth*, that glorious queen of *England*, were of opinion, that as long as an attorney remains ſuch on record, though he does not alledge in his plea of privilege, that he has any clients, or that he proſecutes or defends any cauſes, at the time of an action being brought againſt him, and wherein he is arreſted, he ought to have, and be allowed his privilege; for if he is not qualified to be an attorney, the court will ſtrike him off the roll, on motion, and cauſe ſhewn, that he ought ſo to be. See *Lutw.* 1667. and the term of a writ of privilege for an attorney, in *Reſt. Entr.* 469. b.

The whole court of common pleas, during the time Lord *Camden* preſided therein,

were unanimouſly of the above opinion, for the ſame reaſon; and therefore allowed an attorney of that court his privilege of freedom from arreſt, in a civil ſuit, on its being verified to the ſatisfaction of the court, that his name remained of record, on the roll of attornies of that court, as an attorney thereof.

Not to be leſſee in ejectment nor bail.

No attorney to be leſſee in an ejectment, nor bail for a defendant in this court. *Mich.* 1654. *M.* 6 *Geo.* 2.

No changing attorney without rule or order.

No perſon without rule of court, or order of a judge or prothonotary, and notice to the adverſe party or his attorney, ſhall change or ſhift his attorney; and ſuch attorney newly coming in to take notice at his peril of the rules whereunto the former attorney was liable, had he continued. *Mich.* 1654.

And his bill paid.

The court will not permit an attorney to be changed in a cauſe, and another attorney appointed in his ſtead, till his bill of fees and diſburſements be ſettled and paid. *Barnes* 40.

Attornies not to ſhift from one prothonotary's office to another.

No attorney, without leave of the court, ſhall ſhift from the prothonotary's office where firſt ſworn and ſettled; and no prothonotary ſhall ſuffer ſuch attorney to enter any of his cauſes in his office contrary to his rule. *Trin.* 21 *Car.* 2.

But ſee now the following rule.

In the Common Pleas.

Trinity Term 10 *Geo.* III.

WHEREAS *William Mainwaring* eſq; chief prothonotary, *John Floyer* and *Anthony Dickins* eſqs; the two other prothonotaries

notaries of this court, have agreed, that the fees, perquiſites and profits, ariſing from the buſineſs tranſacted in their reſpective offices, except certain peculiar fees belonging to the chief prothonotary, ſhall be equally divided between them, and have propoſed, that their ſaid offices ſhall be carried on in one place, and as one office; and *Henry Fothergill*, *Henry Paramor*, and *Henry Barnes*, the ſecondaries to the ſaid prothonotaries, have come to the like agreement with reſpect to the fees, perquiſites, and profits of their reſpective offices (except certain peculiar fees belonging to the ſecondaries to the chief and ſecond prothonotaries) and have propoſed, that their ſaid offices ſhall be carried on in one place, and as one office, in caſe this court ſhall approve the ſaid agreements and propoſals; and the right honourable the earl of *Litchfield*, as *cuſtos brevium* of this court, hath ſignified his aſſent thereto, and this court having taken the premiſſes into conſideration, and being of opinion that the ſame will be for the advantage of the ſuitors, doth approve the ſaid agreements and propoſals, and think fit and order, that the ſame be carried into execution; and that from and after the feaſt of *All Souls* next, the names of the reſpective prothonotaries as heretofore ſeverally put upon proceedings in the ſaid court, be omitted, and ſuch proceedings be only intituled "In the *Common Pleas*," and that any of the ſaid three prothonotaries ſhall and may proceed on and determine all or any references and benefits of this c urt, which ought

ought to be tranſacted by the prothonotaries thereof, unleſs this court ſhall give particular directions concerning the ſame.

The clerk of the warrants to certify to the ſeal office the names of ſuch attornies that have diſcontinued, and are forejudged the court, and put out of the roll, and have not filed any warrants of attorney, nor continued their names upon the roll for above four terms paſt; and thereupon no ſuch perſon ſhall have a writ of privilege or attachment ſealed until they have the ſaid writ ſigned by the clerk of the warrants, to teſtify that their names are on the roll, for which no fee is to be paid. *Trin.* 29 *Car.* 2.

Attornies who have diſcontinued, forejudged, or put out of the roll, not to have writ of privilege or attachment.

And now the ſealer does not put the ſeal to any writ of privilege or attachment before it is marked by the clerk of the warrants.

Writ of privilege to be ſigned by the clerk of the warrants.

An attorney has the privilege of ſuing by attachment of privilege, and of being ſued by (*b*) bill in manner herein after mentioned. To this privilege there are ſome exceptions, as 1. At the king's ſuit, (but in a *qui tam* he has his privilege.) 2. In a real action. 3. Where he ſues, or is ſued, *in auter droit* as heir, executor or adminiſtrator. 4. Where he joins, or is joined with another. 5. Where there is not the ſame remedy in this court, as in the caſe of a foreign attachment in *London.* 6. When he is ſued by an attorney of another court, *viz.* an attorney of

Privilege of an attorney as to ſuing and being ſued. See Gilb. Hiſt. C. P. 207, &c.

(*b*) Though demanded under 40*s.* Barnes 158, 159. 2 Wils. Rep. 44.

this

this court ſued by an attorney of *B. R. et vice verſa*, for the general rule is, that privilege takes away privilege; but then it ought to be for a debt really due, and not on a note colourably indorſed without conſideration, in order to deprive the defendant of his privilege; for this is an abuſe of privilege in the plaintiff, who thereby becomes unworthy of any privilege. *Barnes* 44. If an attorney of one court hath cauſe of action againſt another attorney of the ſame court, he ought to ſue by bill, and not by attachment of privilege; for it ſeems needleſs to ſend a writ to the ſheriff to bring in a defendant, who is preſumed to be ſtanding at the plaintiff's elbow in his own court.

Attorney of *Common Pleas* by entering into a bail bond in an action in *B. R.* waves his privilege of being ſued in *C. B. Barnes* 117.

Attorney not bound to ſerve in the militia.

On hearing counſel for Mr. *Heaton*, an attorney *C. B.* and for the deputy lieutenancy, the court granted a writ of privilege to excuſe Mr. *Heaton* from ſerving in the militia of the city of *London*, the ſervice being perſonal. *Mich.* 14 *Geo.* 2. *Barnes* 42.

nor conſtable, &c.

Privilege from ſerving the office of conſtable, though there be a cuſtom for perſons to be choſen into that office in reſpect of their eſtates, or otherwiſe, for no cuſtom ſhall be intended to be more antient than that of this court. *Cro. Car.* 283, 389. *Noy* 112. *March* 30. 1 *Mod.* 13. 1 *Vent.* 16, 29. 2 *Keb.* 477, 508. 1 *Lev.* 265. *T. Raym.* 179. For privilege in other reſpects, ſee

Townſend's

Townſend's Tables 452, 453. *Cornwall's Tables* 432, 433.

All attornies of this court ſhould be admitted of ſome inn of court, or *Chancery*, and take chambers there, (if they conveniently may be had) elſe lodgings in ſome convenient place near the ſaid inns, and leave notice in writing with the butler or porter of ſuch inn where their lodgings are, except ſuch attornies, who are inhabitants or houſekeepers in *London*, *Weſtminſter*, *Southwark*, or the ſuburbs thereof, and liberty of the *Tower* of *London*, and *St. Katherine's*; or are attornies of any courts within the ſaid cities, town and liberty. *Mich.* 1654. *Trin.* 29 *Car.* 2. *Mich.* 4 *Annæ.*

Attornies to be admitted of ſome of the inns of court.

Except.

Clerk of the warrants is to cauſe an alphabetical book to be prepared and kept in his office, for inſpection *gratis*; wherein every practiſing attorney, reſident in *London* or *Weſtminſter*, or within ten miles thereof, ſhall have his name and place of abode, or ſome place within the ſaid cities, or one of them, where he may be ſerved with the proceedings of court: and if copy of ſuch as do not require perſonal ſervice, be left at place *laſt* (*i*) entered, with *any* perſon there; that ſhall be deemed good ſervice. *Hilary* 9 *Geo.* III.

(*i*) If no entry be made, fixing up any of the ſaid proceedings, in the Prothonotary's office, No. 2. *Tanfield Court*, *Inner Temple*, (unleſs *perſonal* ſervice be required) ſhall be deemed ſufficiently ſerved. Same rule.

Every

Each attorney pays 8d. *a term to the clerk of the warrants.*

Every attorney of the court pays to the clerk of the warrants 8*d.* a term, *viz.* 4*d.* a term for the puiſne judges (to be diſtributed in charity) and 4*d.* a term for the cryers of the court. And when any attorney brings a writ of privilege or attachment to be marked, or warrant of attorney to be filed, he muſt pay the arrears (if any) of his termage.

Attorney reſtored, who had been ſtruck out of the roll at his own requeſt.

Mr. *Moody*, an attorney of *Hampſhire*, having at his own requeſt been ſtruck out of the rolls of attornies, was, upon his own motion in the treaſury chamber, and producing an affidavit of his reaſons, reſtored to the office and privilege of an attorney, he conſenting not to take advantage of his privilege againſt any action then depending againſt him, if there was any. *Trin.* 16 *Geo.* 2. *Barnes* 42, 43.

Attorney anſwerable for his agent.

A country attorney is anſwerable to his client for his agent. *Barnes* 37.

Matters not to be tranſacted in the country.

Where country attornies are concerned, declarations, pleas, and other proceedings, ſhould not be delivered and carried on in the country, but by the agents in town.

Declaration.

If a rule be given to declare, and the plaintiff's attorney in the country agrees that a demand of the declaration may be made on him in the country, which is accordingly done, and a *Non-pros* ſigned for want of a declaration, the *Non-pros* is irregular, and may be ſet aſide; for by the practice of the court, the declaration ſhould have been demanded of the agent in town.

If

If the agent of the plaintiff's attorney gives the agent for the defendant time to plead, the country attorney cannot ſign judgment till that time be expired. *Plea.*

A plea delivered in the country is irregular, and judgment may be ſigned. See *Barnes* 251. *Plea.*

If the country attornies agree that the iſſue ſhall be delivered in the country, and it is notwithſtanding tendered in town, and not paid for by the agent, judgment may be ſigned, for the agreement is void. *Barnes* 251. *Iſſue.*

But where the defendant pleads by his attorney in the country, and the plaintiff's attorney accepts it there, he may tender the iſſue in the country, and if not paid for there, may ſign judgment. *Iſſue.*

Notice of trial muſt be given in town, but a countermand may be given in the country. *Notice of trial.* *Countermand.*

In order to be admitted an attorney, you muſt make an affidavit of having faithfully ſerved your time out; having done this, or indeed before, take that part of the articles executed by your maſter, to one of the judges chambers, who will (*k*) examine whether you are qualified to be admitted; you muſt get the deputy clerk of the warrants N°. 6. *Clifford's Inn*, to attend the judge with the original affidavit of the due execution of your articles. Some morning in

(*k*) See *Ante* 37.

term time attend *Weſtminſter* hall to be ſworn; this done get your admiſſion engroſſed on a treble 40*s.* ſtampt piece of parchment, ſigned by the judge who examined you. The expences out of pocket are about ſeven guineas. See *Rayn. Read.* on *Stat.* 4to. p. 108.

Sheriffs.

AS they are bound to execute the proceſs of the court, and puniſhable by the court for miſbehaviour in executing the ſame, they are generally eſteemed and looked upon as officers of the court.

Every ſheriff to make a deputy on record in court.

Every ſheriff ſhall make yearly a deputy on record, in the *Chancery*, *King's Bench*, *Common Pleas*, and *Exchequer*, before they ſhall return any writs, to receive all manner of writs and warrants delivered to them. *Stat.* 23 *H.* 6. *c.* 10.

Every ſheriff is to make and enter on record a deputy to receive all manner of writs and proceſs. *Mich.* 1654. *Hill.* 14, 15, and *Hill.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2, *Com. Rep.* 566. *pl.* 243.

Deputy to have his name and place of abode in London *or* Weſtminſter *ſet up in the office of the clerk of the warrants.*

Each deputy yearly to have his name and place of reſidence in *London* or *Weſtminſter*, ſet up in the office of the clerk of the warrants. *Mich.* 1654.

To give his attendance in Weſtminſter

Sheriffs deputies are to give their attendance in *Weſtminſter-Hall* daily in term-time, that

that they may with more conveniency diſpatch the duty belonging to their reſpective offices. *Mich.* 1654. *Hil.* 14 & 15. and *Hil.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2. Hall *in Term time.*

Sheriffs are not to deliver out any warrants before the writs be ſued forth and delivered to them. Nor deliver out any blank warrants. *Mich.* 1654. *Hil.* 14 & 15 *Car.* 2. *Trin.* 1 *Jac.* 2. *Sheriffs not to deliver out warrants before writs delivered to them, or blank warrants.* Stat 43 Eliz. c. 6. 6 Geo. 1. c. 21.

No under-ſheriff to practice as an attorney during ſuch his imployment. *Stat.* 1 *H.* 5. 4. *Mich.* 1654. *Stat.* 22 *G.* 2. *c.* 46. § 14. *No under ſheriff to practice as an attorney.*

The ſheriff, for ſerving any execution upon the body, lands, goods or chattels, ſhall have 12 *d.* in the pound where the ſum exceeds not 100 *l.* and if it does exceed, then 6 *d.* for every pound exceeding 100 *l.* that he ſhall levy, or take the body in execution for. (*l*) *Stat.* 29 *Eliz. c.* 4. *Sheriff's fees on executions.*

This act ſhall not extend to *poundage* on *Ca. Sa.* at the ſuit of any ſheriff, or other crown officer upon bail bond on proſecution for duties to the king, or penalty for preventing clandeſtine running or receiving prohibited goods, or where poundage would not

(*l*) This printed ſtatute is wrong, for the parliament was held 28 *Eliz.* *T. Raym.* 1. *Pl. Com.* 303. *Ander.* 294. pl. 303. 2 *Mod.* 242. *Lutw.* 203, 1117. *Skin.* 364.

be due, if proceedings were carried on in name of the crown. 7 *Geo.* III. chap. 29.

On writ of Poſſeſſion. On executing a writ of *Habere facias poſſeſſionem*, the ſheriff ſhall not take above 1*s.* in the pound, where the rent exceeds not 100*l. per annum*; and 6*d.* in the pound for every pound over and above. *Stat.* 3 *Geo.* 1. *c.* 15. §. 16.

On Capias ad ſatisfaciendum On executing a *Capias ad ſatisfaciendum*, the ſheriff to take poundage only for the real debt, on penalty of treble damages, and 200*l.* The real debt to be mark'd on the back of the writ. *Same ſtat.* §. 17.

Sheriffs to indorſe attorney's name on warrants. Every ſheriff, or other officer who ſhall make out any warrant upon any writ, proceſs or execution, and ſhall not ſubſcribe or indorſe the name of the attorney who ſued out the ſame, ſhall forfeit the ſum of five pounds, to be aſſeſſed as a fine upon ſuch ſheriff or other officer, by the court; one moiety to the king, the other moiety to the party aggrieved by ſuch omiſſion. *Stat.* 12 *Geo.* 2. *c.* 13. *Stat.* 2 *Geo.* 2. *c.* 23. §. 22.

Sheriff not returning proceſs within 6 *days after ſervice of rule, to pay coſts.* If any ſheriff, under-ſheriff, or their deputy, bailiff, coroner, bailiff of any liberty, or other officer having the return of proceſs, ſhall not return the ſame, or bring in the body within four days after, *Barnes*, 102. See *Id.* 400. *H.* 7 *Geo.* III. *Barnes* 494, after ſervice of a rule of this court for that purpoſe, he ſhall be liable to pay the coſts occaſioned by ſuch neglect. *Hil.* 8 *G.* 1.

Service on the under ſheriff ſufficient. Service of the rule on the under-ſheriff, or on one who really acts as under-ſheriff, though he be not under-ſheriff, is ſufficient to

to ground attachment againſt the ſheriff. *Barnes* 405.

When a new ſheriff is choſen, yet the old ſheriff continues ſheriff of the county till the new ſheriff is ſworn, and he receives a writ of *Superſedeas*.

Old ſheriff to continue till new one ſworn.

On the deceaſe of any ſheriff the under-ſheriff is to act in his name till another be appointed. *Stat.* 3 *Geo.* 1. *c.* 15. §. 8.

On the death of a ſheriff the under ſheriff to act till a new one appointed.

The ſheriff of every ſhire, being no city or town made a ſhire, within which there is any franchiſe or liberty, the lord whereof is intitled to the return of writs, ſhall (if required by ſuch lord) within one month after ſuch requeſt, nominate and appoint one or more deputy or deputies, at the coſts of ſuch lord, to be reſident at ſome town or place in or near ſuch franchiſe or liberty, to be appointed by the lord chancellor and chief juſtice of *B. R.* and *C. B.* or one of them hereby authoriſed to appoint ſuch town or place, and to ſettle what coſts ſhall be paid therefore by ſuch lord; and ſuch deputy or deputies ſhall reſide at ſuch town or place ſo to be appointed, and have authority in the ſheriff's name to receive and open all ſuch writs and proceſs (the execution or return whereof doth belong to the lord of ſuch franchiſe or liberty), and in the name and under the ſeal of the ſheriff, to iſſue out ſuch warrant or warrants to ſuch lord as by law is requiſite for the due execution of ſuch writ or proceſs; and ſuch deputy or deputies is and are required, on tender of ſuch writ or proceſs, to receive and open the ſame, and

Sheriff, on requeſt and coſt of a lord of a franchiſe or liberty, to appoint a deputy to reſide at ſome place in or near the franchiſe.

Place and coſts to be appointed and ſettled by lord chancellor, &c.

Deputy to receive writs, and in name and under ſeal of ſheriff to iſſue warrants to the lord of the franchiſe.

issue such warrants thereon without delay, in such manner and form as the sheriff may or ought to do, without taking any further fee than now due and accustomed for such warrant; on pain that every such sheriff or deputy guilty of any wilful neglect or default shall be punished as for a contempt of court, and make satisfaction to the party damaged. *Stat.* 13 *Geo.* 2. *c.* 18.

Taking no more than the accustomed fees.

Punishment of sheriff or deputy making wilful neglect.

High sheriff can appoint no more than one under sheriff extraordinary. 2 *Wils.* 378.

All sheriffs of any county, city, liberty, division, town corporate, or place, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same; and in case any such sheriff shall refuse or neglect to turn over such process, in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they, shall sustain by such neglect or refusal. *Stat.* 20 *Geo.* 2. *c.* 37.

Sheriff by indenture and schedule to turn over all writs, &c. to his successor.

Or make satisfaction to party injured

No sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his said office. *Same stat.*

Sheriff not liable to return any writ, unless required within 6 months after expiration of his office.

Of

Of the four terms.

THERE are four terms in the year, during which this court ſits, *viz. Michaelmas* term, *Hilary* term, *Eaſter* term, and *Trinity* term; the two firſt are call'd fix'd terms, as conſtantly falling on certain fix'd days in the year, the two latter terms are called moveable terms, *Eaſter* term being governed by *Eaſter* day, and *Trinity* term being governed by *Corpus Chriſti* day, both which are moveable feaſts. *Hilary* and *Trinity* terms are called iſſuable terms, for that in them iſſues are made up for trials at the aſſizes which reſpectively follow thoſe terms.

The four terms.

Fixed and moveable terms.

Iſſuable terms.

Inſtr. cler. 21, 22.

Michaelmas term begins on the ſixth of *November*, if not *Sunday*; if *Sunday*, on the ſeventh (its eſſoin-day being the third day of *November*: The morrow of *All Souls*) and ends on the twenty-eighth day of *November*, if it be not a *Sunday*, but if a *Sunday*, then on the morrow following. This term, before the ſtatute 16 *Car.* 1. *c.* 6. began on the ninth day of *October*, and had eight returns, which by that ſtatute are reduced to ſix, and before the *ſtat.* 24 *Geo.* 2. *c.* 48. began on the twenty-third day of *October*, and had ſix returns, which by that ſtatute are reduced to four.

Michaelmas *term.*

Hilary *term.* *See Spelm. Rem* 82. *Inſtr. cler.* 21.

Hilary term begins on the twenty-third day of *January* (except it be on a *Sunday*, and then on the morrow after) being always that day eight weeks on which *Michaelmas* term ended, its eſſoin-day being the twentieth of *January*, and it ends on the twelfth day of *February* (if not *Sunday*, and then on the morrow after) being always the ſame day of the week on which *Michaelmas* term began.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm. Rem.* 86.

Eaſter *term.* *Inſtr. cler* 21.

Eaſter term begins on the *Wedneſday* fortnight after *Eaſter-day*, its eſſoin-day being the *Sunday* next preceding, but held on the *Monday*, and ends on the *Monday* next after Aſcenſion day.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm. Rem.* 86.

Trinity *term.*

Trinity term begins on the *Friday* next after *Trinity Sunday*; and though that day ſhould happen to be the feaſt of St. *John* the *Baptiſt*, the term muſt then begin, for by the *ſtat.* 32 *H.* 8. *c.* 21. the full term ſhall begin on the *Friday* next after *Corpus Chriſti* day; the eſſoin-day is the *Monday* preceding. It ends on the *Wedneſday* fortnight after it began, except it happen on the twenty-fourth of *June*, being the feaſt of St. *John* the *Baptiſt*, and then it muſt be adjourned on the *Tueſday* to the *Thurſday* following. This term was limited and ſettled as it now

is,

is, by the ſaid *ſtat.* 32 *H.* 8. it having before more returns, and a different commencement.

In the *Exchequer* it begins four days before the full term in the other courts. *Spelm. Rem.* 86.

The eſſoine-day (from *eſſoine*, or *exonnie*, an *excuſe*, where the defendant cannot conveniently appear) is ſaid to be the firſt day of the term, and on that day one of the judges goes down to *Weſtminſter* for the keeping eſſoins, profers, returns, *&c.* But full term begins always the fourth day after incluſive, except in *Trinity* term, when it begins on the fifth, by reaſon of *Corpus Chriſti* day, which is *dies non juridicus.* *Eſſoin-day.*

The eſſoin-day is the firſt day of term, but in common parlance the firſt day the court ſits is the firſt day of the term; ſo where promiſe was made, the day after the eſſoin-day of *Trinity* term, to deliver an indenture before the end of the *Trinity* term next, adjudged he muſt do it the ſame term, not that time twelve months. *Biſhop* and *Harcourt*, *Cr. El.* 210. *pl.* 6. *Sav.* 124. *Ander.* 240. *pl.* 256. *Leon.* 210. *pl.* 295. 5 *Rep.* 37. 2 *Danv. Abr.* 9. *id.* 225. *pl.* 12. 3 *Dauv. Abr.* 46. *pl.* 1.

On a writ of adjournment nothing can be done at the day but to read the writ, and adjourn all appearances and proceedings till the day appointed, and no appearance can be made, or other matters done then, and becauſe *Writ of adjournment. Cro. Jam.* 445, 446.

cauſe an imparlance was entered as on that day, it was held error.

Judgment. A judgment relates to the eſſoin-day, which is the firſt day to law, and not to the *Quarto die poſt*, which is but a day of grace; *ideo* a judgment of *Hilary* term had precedence to a ſtatute acknowledged. 22 *Jan. Stamford* and *Cooper*, *Cr. Car.* 102. *Hetl.* 72. *Hut.* 95. 1 *Rep.* 94.

Michaelmas

Michaelmas term, which contains three weeks and two days, hath four returns.

By ORIGINAL.	*By ATTACHMENT, BILL, &c.*
1. On the morrow of *All Souls.*	On ( ) next after the morrow of *All Souls.*
2. On the morrow of Saint *Martin.*	On ( ) next after the morrow of St. *Martin.*
3. In eight days of Saint *Martin.*	On ( ) next after eight days of St. *Martin.*
4. In fifteen days of Saint *Martin.*	On ( ) next after fifteen days of St. *Martin.*

Hilary

Hilary term, which contains three weeks complete, hath four returns.

By ORIGINAL.	*By ATTACHMENT, BILL,* &c.
1. In eight days of Saint *Hilary.*	On ( ) next after eight days of St. *Hilary.*
2. In fifteen days of Saint *Hilary.*	On ( ) next after fifteen days of St. *Hilary.*
3. On the morrow of the purification of the bleſſed *Mary.*	On ( ) next after the morrow of the purification of the bleſſed Virgin *Mary.*
4. In eight days of the purification of the bleſſed *Mary.*	On ( ) next after eight days of the purification of the bleſſed Virgin *Mary.*

Eaſter

Eaſter term, which contains three weeks and ſix days, hath five returns.

By ORIGINAL.	*By* ATTACHMENT, BILL, &c.
1. In fifteen days of *Eaſter*.	On (*Wedneſday*) next after fifteen days of *Eaſter*.
2. In three weeks from the day of *Eaſter*.	On ( ) next after three weeks from the day of *Eaſter*.
3. In one month from the day of *Eaſter*.	On ( ) next after one month from the day of *Eaſter*.
4. In five weeks from the day of *Eaſter*.	On ( ) next after five weeks from the day of *Eaſter*.
5. On the morrow of the aſcenſion of our Lord.	On (*Monday*) next after the morrow of the aſcenſion of our Lord.

Trinity

Trinity term, which contains twenty days, hath four returns.

By ORIGINAL.	*By ATTACHMENT, BILL, &c.*
1. On the morrow of the Holy *Trinity.*	On (*Friday*) next after the morrow of the Holy *Trinity.*
2. In eight days of the Holy *Trinity.*	On ( ) next after eight days of the Holy *Trinity.*
3. In fifteen days of the Holy *Trinity.*	On ( ) next after fifteen days of the Holy *Trinity.*
4. In three weeks from the day of the Holy *Trinity.*	On *(Wedneſday)* next after three weeks from the day of the Holy *Trinity.*

All

All the eſſoin-days in *Eaſter* term except the laſt, which is "*the morrow of the aſcenſion of our Lord*" and all the eſſoin-days in *Trinity* term except the firſt, which is "*the morrow of the Holy Trinity*," fall on *Sundays*. *Eſſoin days in* Eaſter *and* Trinity *terms are* Sundays, *except.*

All writs iſſuing out of this court, grounded upon original writs out of *Chancery*, muſt be made returnable on general return days as on the morrow of the Holy *Trinity*; but writs of attachment, and writs ſubſequent thereto, and writs grounded on bills filed againſt attornies, and ſuch officers of the court as are intitled to the privilege of the court, or members of the houſe of commons, writs of *Habeas corpus*, &c. muſt be made returnable on a day certain in full term, as on *Friday* next after the morrow of the Holy *Trinity*. But care muſt be taken that they be not made returnable on any of the following days, which are *Dies non juridici*, viz. the feaſt of the *Purification* in *Hilary* term, *Aſcenſion day* in *Eaſter*, and the feaſt of St. *John* the *Baptiſt*, if it happen in *Trinity* term (unleſs it be the firſt day of that term.) *Writs grounded on originals returnable on general returns.* *Attachments, &c. on days certain.* Dies non juridici.

There muſt be at leaſt fifteen days between the *Teſte* and return of all original writs returnable in this court, and between the *Teſte* and return of all ordinary writs ſued and procured upon the ſame, except where altered by act of parliament. *Fifteen days between* Teſte *and return of original writs and writs ſubſequent.*

A *Capias ad reſpondendum*, not having 15 days between the *Teſte* and return, ſet aſide, but without coſts, 2 *Wils.* 117. 3 *Wils.* 455. *Barnes* 427.

Cap.

Cap. ad reſpond. amended, there not being 15 days between the *Teſte* and return thereof. 3 *Wils. Rep.* 454.

Notice on copy of writ ſerved to appear at return, mentioning the day of the month, without adding *inſtant*, *next*, or 1757, ſufficient; and former (*a*) doctrine on this ſubject exploded. *Barnes* 425.

And attachments of privilege.

An attachment of privilege at the ſuit of an attorney muſt alſo have fifteen days between the *Teſte* and return.

Where writs of Ven. fac. Hab. cor. jur. Diſtring. jur. Fi. fac. *and* Ca. ſa. *need not have* 15 *days between* Teſte *and return.*

In all actions of debt, and other perſonal actions, actions of *Ejectione firmæ* for lands or tenements, after iſſue joined to be tried by a jury, and after any judgment had or obtained, there ſhall not need to be fifteen days between the *Teſte* and return of any writ of *Venire facias*, *Habeas corpora juratorum*, or *Diſtringas juratores*, writ of *Fieri* (*b*) *facias*, or writ of *Capias ad ſatisfaciendum*, and the want thereof ſhall not be aſſigned for error; but not to extend to any writ of *Capias ad ſatisfaciendum*, whereon an exigent after judgment is to be awarded, or to a *Capias ad ſatisfaciendum* againſt the defendant to make the bail liable. 13 *Car.* 2. *ſtat.* 2. *c.* 2. §. 6, 7.

Except a Ca. ſa. *to ground an exigent, or make bail liable.*

(*a*) See *Barnes* 419.

(*b*) Rule abſolute to quaſh writ of *Fi. Fa.* returnable on a *general* return, inſtead of a day certain, as it ought to have been, without coſts, and defendant to bring no action. *Barnes* 213.

Of

Of commencing an action.

ALL actions in this court are either founded on originals out of *Chancery*; *Action by original.*

On attachments of privilege at the ſuit of attornies, or other officers intitled to the privilege of the court; *Attachment of privilege.*

On bills filed againſt ſuch attornies or officers, or againſt members of parliament; *Bill.*

On writs of *Habeas corpus cum cauſa*, *Certiorari*, &c. removing cauſes out of inferior courts of record; Habeas corpus, *&c.*

On writs of *Recordari facias loquelam*, *Accedas ad curiam*, or writs of falſe judgment, removing cauſes out of inferior courts not of record. Re. fa. lo. *&c.*

In commencing actions in this court, It is to be conſidered, What cauſes of action require bail, and what perſons are liable to be held to bail. *Of bail.*

Bail is not required of an (*a*) heir, nor of an executor or adminiſtrator, unleſs on a *Devaſtavit* grounded, as I apprehend, on a return by the ſheriff to a *Fieri facias de bonis teſtatoris*, or a *Scire fieri* inquiry, and not on the bare ſuggeſtion of the plaintiff. *Gilb. Hiſt. C. P.* 37. *No bail of an heir, nor of an executor or adminiſtrator, unleſs on a* Devaſtavit *returned.*

In debt on a penal ſtatute the defendant is not to be held to ſpecial bail. *Yelv.* 53. *Gilb. Hiſt. C. P.* 37. *Barnes* 80. *Nor on a penal ſtatute.*

Neither is bail required in debt on a bail- *Nor on a bail-*

(*a*) The contrary held in *Rep. & Caſ. Pract. C. P.* 8.

bond or recognizance of bail.

bond, or recognizance of bail, for that would tend to bail *ad infinitum*. But ſee *Rep. & Caſ. Pract. C. P.* 18. *Pract. Reg. C. P.* which ſeem *contra*.

In battery, conſpiracy, or falſe impriſonment, no bail of courſe.

In aſſault (*b*) conſpiracy, or falſe impriſonment, no bail of courſe, without ſpecial motion and order. *Mich.* 1654. *Gilb. Hiſt. C. P.* 37. *Barnes* 76.

No bail for a malicious proſecution where the plaintiff was acquitted upon a defect in the indictment.

In an action for a malicious proſecution a judge will not grant an order to hold the defendant to bail, if the plaintiff was acquitted upon a defect in the indictment, and not upon the merits. 2 *Keb.* 796. *pl.* 34. *Barnes* 76 *Rep. &. Caſ. Pract. C. P.* 148. *Pract. Reg. C. P.* 66.

Bail by order for criminal converſation.

In an action for a criminal converſation with the plaintiff's wife, on an affidavit of the fact, a judge will grant an order to hold the defendant to bail for ſuch ſum as he ſhall think reaſonable on the circumſtances of the caſe and parties. *Barnes* 61. *Pract. Reg. C. P.* 63.

Bail in an action for meſne profits.

On affidavit and application in the treaſury, the judges have ordered the defendant to be held to bail in an action for meſne profits. *Barnes* 79, 85. See 87. *Pract. Reg. C. P.* 62.

In debt for rent.

Defendant may be held to bail in an action of debt for double rent, by virtue of *Stat.* 4. *Geo.* 2. *c.* 28. §. 1.

Bail in treſpaſs for enter-

On an affidavit made, the defendant was

(*b*) *Barnes* 76. A judge at his chambers will order ſpecial bail if he thinks fit, which the defendant has a right to get diſcharged by application to the court, if not well founded. *Barnes* 61.

held

held to bail in an action of treſpaſs, for entering the plaintiff's hop-ground, and taking and carrying away 20,000 hop-poles, to the plaintiff's damage of 40 *l.* The court refuſed to diſcharge the defendant on a common appearance, and declared, tho' it was reaſonable to have a judge's order in battery, there was none in this caſe. *Cook & al.* v. *Sankey, Trin.* 7 & 8 *Geo.* 2. *Rep. & Caſ. Pract. C. P.* 106. *Pract. Reg. C. P.* 64. *Barnes* 65.

ing plaintiff's hop-ground, and taking away his hop-poles.

In ſlander no bail, except in ſlander of title, and then to be left to the diſcretion of the judge. *Mich.* 1654. *Barnes* 80.

No bail in ſlander, except ſlander of title.

Bail is not generally required in covenant, unleſs it be for payment of money. *Same rule. Barnes* 67, 78.

Nor in covenant, unleſs for payment of money.

But tho' the covenant be not for payment of money, if the plaintiff makes an affidavit of the ſum he is damnified in by the breach of the covenant, the court will not diſcharge the defendant on a common appearance. *Barnes* 67. but *Barnes* 108, 109. ſeem *contra.*

Or damages aſcertained by affidavit.

Defendant held to bail, where cauſe of action did not accrue till after the bankruptcy and the money due on a contingency, the ſame not being within any of the ſtatutes of bankrupts. *Barnes* 113.

Where an action of debt is brought on a judgment, if there was bail put in to the original action the defendant ſhall not be held to bail in the action of debt on the judgment. *Barnes* 107, 116. but if there was no bail in the original action, then bail

Bail in debt on a judgment, if no bail in the original action; aliter *if bail in the original action.*

must be put in to the action of debt on the judgment. *Barnes* 71. *Com. Rep.* 556. *Pract Reg. C. P.* 54, 56, 57. *Rep. & Caſ. Pract. C. P.* 32, 77.

The like tho' error brought on the judgment, and bail be put in on the writ of error.

If a writ of error be brought on a judgment, and bail be put in on the writ of error, and pending the writ of error, an action of debt be brought on the judgment, the defendant in ſuch action ſhall be held to bail if there was no bail in the original action; for though it may be ſaid the bail on the writ of error is a ſecurity for the plaintiff's demand, yet it is to be obſerved that there may be accidents whereby ſuch bail will not be liable; as that the writ may abate by the death of the chief juſtice, or the like.

After judgment reverſed by writ of error, defendant had a *Superſedeas*, but before diſcharged, was charged with new declaration at plaintiff's ſuit; and upon application to court was diſcharged by rule from new declaration, and her *Superſedeas* was allowed; after diſcharge plaintiff cauſed defendant to be arreſted and held to bail for former cauſe of action; whereupon court was moved to be again diſcharged by *Superſedeas*, upon entering common appearance: court was (*c*) divided in opinion, upon hearing council on both ſides. *No rule. Barnes* 499.

(*c*) The defendant was a *woman*, and therefore I think her having two judges in her favour, and being a caſe of liberty, ſhe ſhould have been diſcharged.

A pri-

A priſoner diſcharged by *Superſedeas* for want of proſecution ſhall not be held to bail in an action of debt brought on the judgment obtained in the cauſe wherein he was diſcharged. *Hil.* 8 *Geo.* 2. *Barnes* 116, *See the rule at large*, tit. *Priſoners.*

Priſoner diſcharged not to be held to bail in debt on the judgment.

If an action be brought againſt *baron* and *feme*, and the wife only be arreſted, ſhe ſhall be diſcharged on a common appearance; for otherwiſe the huſband may contrive the impriſonment of the wife; 3 *Wils.* 124. but if both the huſband and wife be arreſted, ſhe ſhall not be diſcharged until bail be put in (*a*) for both, for otherwiſe a woman may marry a man in gaol and defraud her creditors. *Barnes* 67, 68. *Sed qu'*: *Rep. & Caſ. Pract. C. P.* 117. *Barnes* 96, 100. 6 *Mod.* 17, 105. 7 *Mod.* 10, 63. *Lev.* 1, 216. *Barnes* 67, 68. *Sid.* 395. *pl.* 2. 2 *Keb. Rep.* 442. *pl.* 4. But ſee 10 *Mod.* 162.

Action againſt baron and feme, and wife only arreſted, ſhe ſhall be diſcharged on a common appearance. Aliter *if both arreſted.*

Huſband and wife rendered after judgment, in diſcharge of bail wife releaſed upon motion. 3 *Wils.* 124.

No attorney of this court, or other officer intitled to the privilege of the court, is to be held to bail, unleſs it be on an attachment for a contempt (to which, bail muſt be taken by the court or a judge, and not by the ſheriff) or in an action at the ſuit of an attorney, or any other perſon intitled to the privilege of

Attorney not to be held to bail unleſs for a contempt, &c.

(*d*) An attachment granted againſt an under-ſheriff for detaining a married woman in priſon till huſband found bail for her. *Lat.* 224.

another court, *viz. B. R.* or, for in ſuch caſe the plaintiff's privilege takes away the defendant's. *Vide antea.*

Seamen and ſoldiers. 31 *Geo.* 2. *c.* 10. *ſ.* 28.

By *ſtat.* 1 *Geo.* 2. *ſtat.* 2. *c.* 14. §. 15. No (*e*) ſeaman to be taken out of his majeſty's ſervice, unleſs oath be made that the original cauſe of action amounted to 20*l. Barnes* 95, 114. and by the annual mutiny act, no ſoldier to be taken out of his majeſty's ſervice unleſs oath be made that the original debt amounted to 10*l. Pract. Reg. C. P.* 61. *Barnes* 114, 433. An out-penſioner of *Chelſea* college, not being a ſoldier in actual ſervice, is not a ſoldier within the meaning of the mutiny acts. *Pract. Reg. C. P.* 59, 60. *Barnes* 432. *Rep. & Caſ. Pract. C. P.* 77.

No bail where the cauſe of action amounts not to 10l.

No perſon ſhall be held to bail upon any proceſs iſſuing out of this court, where the cauſe of action does not amount to the ſum of ten pounds or upwards; and in all caſes where the cauſe of action ſhall not amount to ten pounds or upwards, the plaintiff ſhall not arreſt the body of the defendant, but ſhall ſerve him perſonally with a copy of the proceſs. *Stat.* 12 *Geo. c.* 29. §. 1, 2. *Stat.* 5 *Geo.* 2. *c.* 27. *Stat.* 13 *Geo.* 2. *c.* 18. All theſe acts are perpetuated by 21 *Geo.* 2. *c.* 3.

But defendant to be ſerved with copy of proceſs.

No ſpecial bail in Wales *or the counties Palatine, un-*

No ſheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or proceſs iſſuing out of any of the

(*e*) No volunteer mariner. *Stat.* 2 *Geo.* 3. *c.* 12. *ſect.* 36.

courts

courts of record at *Weſtminſter*, ſhall hold any perſon to ſpecial bail, unleſs an affidavit be firſt made in writing, and filed in that court out of which ſuch writ or proceſs is to iſſue, ſignifying the cauſe of action, and that the ſame is twenty pounds and upwards; and where the cauſe of action is twenty pounds and upwards, bail ſhall not be taken for more than the ſum expreſſed in ſuch affidavit. *Stat.* 11 & 12 *W.* 3. *c.* 9. *ſ.* 2.

leſs affidavit be made of the cauſe of action, and that the ſame amounts to 20*l. and upwards.*

A defendant not to be held to bail, on a diſcontinuance, in a meer action for ſame ſum and cauſe, but common appearance to be accepted, and *Superſedeas* granted. *Barnes* 113.

After nonſuit in *B. R.* a common appearance ordered to be accepted in a new bailable action in *C. B.* *Barnes* 115.

Defendant held to bail *ſecond* time, for *ſame* cauſe of *action*, after plaintiff had diſcontinued the firſt writ, by reaſon of a miſtake. 2 *Wils.* 381.

Proceedings by original in actions not requiring bail.

If the cauſe of action does not require bail, a *Præcipe* is to be made out for a common *Capias* in treſpaſs, on which the plaintiff may declare in any county, or for any cauſe of action, as the caſe ſhall require. The filacer makes out the *Capias*, and procures the original from the curſitor, and returns and files it.

Where no bail required, a common clauſum fregit *to be ſued out. May declare thereon in any county, or for any cauſe of action.*

The Præcipe.

Præcipe *in treſpaſs.*

Middleſex, Capias for *W. P.* againſt *J. B.* late of the pariſh of St. *Clement Danes* in the county of *Middleſex*, taylor, broke the *Cloſe* at *Weſtminſter*.

J. R. — *Returnable on the octave*
22 *Dec.* 1777. — *of St.* Hilary.

The *Præcipe* is to be carried to the proper filacer, who will make out the *Capias*.

The Form of the Capias.

Capias *thereon.*

	s.	d.
Original	1	0
Filing	0	4
Capias	0	10
Duty	2	0
Seal	0	7
	5	3

GEORGE the third, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take *J. B.* late of the pariſh of St. *Clement Danes* in your county, *Taylor*, if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the octave of St. *Hilary*, to anſwer *W. P.* (*f*) in

(*f*) Plaintiff declares in an action *qui tam*, &c. upon a *Cap. ad reſpond.* ſued out in his own name only, and held well enough. 3 *Wilſ.* 141.

Barnes ſays in a *N. B.* that the practice of this court, is the ſame as ſettled in *B. R.* by the authority of the caſe of *Canning* and *Davis*. *E.* 9 *Geo.* III. *Barnes* 494, 495, the point ſettled ſeems to be, that plaintiff need not ſet out in proceſs, in whoſe or what right he ſues. Lord *Willes* when he differed in opinion from *Barnes*'s book, always ſaid the *Court* and not *Barnes* was

in a plea, wherefore with force and arms he broke the *Close* of the ſaid *W.* at *Weſtminſter*, and did other injuries to him, to his great damage, and againſt our peace; and have there this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the twenty-ninth day of *November* in the ſeventh year of our reign.

You may put four defendants in a writ; but there muſt be but one plaintiff, unleſs it be a joint action.

Then a copy of the proceſs muſt be made with an *Engliſh* notice, ſubſcribed as mentioned in the two next paragraphs, which copy muſt be ſerved on the defendant.

Notice to be written on the copy of the proceſs.

But by *ſtat.* 5 *Geo.* 2. *c.* 27. §. 4. (made perpetual by *ſtat.* 21 *Geo. c.* 3.) upon every copy of ſuch proceſs ſhall be written a notice of the intent and meaning of ſuch ſervice, to the effect following, *viz.*

The form of the notice.

C. D. You are ſerved with this proceſs, to the intent that you may, by your attorney

---

was miſtaken; I take leave to join with the chief juſtice in his politeneſs on this occaſion; for I am perſuaded the caſe alluded to is the rummage of a dead man's papers; for it is impoſſible to ſay in what court it was determined; Mr. *Aſhhurſt* was for defendant, Mr. Solicitor-General for plaintiff.—Now for my part, in the courſe of 20 years attendance in the court of *Common Pleas*, I never obſerved any advocates but *Serjeants* move there; and if it is ſaid it was a caſe in *B. R.* then the *N. B.* is not very ſatisfactory. It ſeems therefore to be, as I obſerved before, the rummage of a dead man's papers; and I would have it expunged out of the next edition, for it diſgraces the beſt book of practice in this court.

appear in his majeſty's court of *Common Pleas* at the return, thereof, being the twentieth of *January* 1778, [as the caſe ſhall happen to be] in order to your defence in this action.

The day of the return to be inſerted though a Sunday.

The very day of the return of the proceſs muſt be inſerted, although it ſhould happen to be a *Sunday*. *Barnes* 293, 294, 295. *Rep. & Caſ. Pract. C. P.* 105, 106.

5 *s. for making and ſerving the copy.*

No more than 5 *s.* is to be taken for the making and ſerving a copy of ſuch proceſs, and no fee for the notice. *Stat.* 5 *Geo.* 2. *c.* 27.

In franchiſes the proceſs to be ſerved by the proper officer.

In particular franchiſes and juriſdictions the proper officer there ſhall execute ſuch proceſs. *Stat.* 5 *Geo.* 2. *c.* 27.

But if the proceſs be not ſerved by the proper officer, the court will not ſtay proceedings; the lord of the liberty may bring his action, if he thinks proper. *Barnes* 404. *Pract. Reg. C. P.* 345. *Rep. & Caſ. Pract. C. P.* 96.

Capias, *and not original, to be ſerved.*

The proceſs, of which a copy is directed by the above ſtatutes to be ſerved on the defendant, muſt be a *Capias*, and not an original writ. *Barnes* 410.

Of ſerving proceſs in a countypalatine.

If the proceſs be directed into a county palatine, the defendant is to be ſerved with a copy of ſuch proceſs, and not with a copy of the mandate thereupon from the biſhop or chancellor to the ſheriff of the county. *Pract. Reg. C. P.* 334. *Rep. & Caſ. of Pract. C. P.* 119. *Barnes* 406, but held otherwiſe in *Pract. Reg. C. P.* 343. *Rep. & Caſ. Pract. C. P.* 38.

When the defendant is ſerved with a copy of a writ, there muſt be an *Engliſh* notice ſubſcribed as above directed, tho' the cauſe of action ſhould be above ten pounds, or the writ ſhould be a ſpecial *Capias*.

Where copy ſerved, it muſt be with notice, tho' action for above 10l. *or writ ſpecial.*

If the proceſs be againſt *baron* and *feme*, ſervice on the huſband is ſufficient for both; and if the huſband does not appear for himſelf and his wife, the plaintiff may enter an appearance for both. *Barnes* 406, 412.

Proceſs againſt baron and feme, ſervice on the huſband ſufficient.

But in a joint action againſt two or more defendants, each defendant muſt be ſerved with a copy of the proceſs.

In a join action each defendant muſt be ſerved.

Proceedings were ſtayed by the court, becauſe no attorney's name was ſet upon the copy of the proceſs ſerved upon the defendant. *Barnes* 415. *Rep. & Caſ. of Pract. C. P.* 102. *Pract. Reg. C. P.* 440, 441.

Attorney's name to be on copy of proceſs.

Service of proceſs, though made on the return thereof, is deemed well ſerved. *Hil.* 8 *Geo.* III. *C. B.* 10 *Feb.* 1768. *Wilſ. Rep.* 372.

It ſeems as if the court formerly (*g*) required, that proceſs ſhould be ſerved before the day of return; but they then differed as to the time of day, for in one (*b*) caſe they held, that ſervice of proceſs at ten o'clock in the evening, on the day of return, was good ſervice, for that there was no fraction of a

---

(*g*) See *Barnes* 415, 416, 424. *Rich. Pract. Reg.* 352. *Co. Caſ. & Rep. Pract.* 52.

(*b*) *E.* 1 *Geo.* II. *C. B. Matthews* and *Partridge.* MS. notes.

day;

day; and in (*i*) another, it was alledged, that the ſervice was at ſeven o'clock in the evening, of the day of return, and that the court was riſen before the ſervice; however the judges would not then preſume, that the ſervice was after the riſing of the court, unleſs it was proved by affidavit; but now I apprehend, that, according to the abovementioned rule, if the proceſs be ſerved any time of the day whereon it is returnable, before nine o'clock in the evening, it will be ſufficient.

Irregularity in proceſs to be complained of before interlocutory judgment.

If there be any irregularity in the ſervice of the proceſs, or in the notice ſubſcribed to the proceſs, the defendant muſt apply to the court before interlocutory judgment is ſigned. *Pract. Reg. C. P.* 347. See *Barnes* 211, 296, 269. *Rep. & Caſ. Pract. C. P.* 152. See *Poſtea fol.*

And proceſs to be annexed to affidavit.

If the defendant complains of any irregularity in the proceſs, or notice ſubſcribed, he muſt annex the copy to his affidavit.

Proceedings by original in actions requiring bail.

If bail required, affidavit to be made of cauſe of action.

If the cauſe of action amounts to ten pounds or upwards, affidavit muſt be made and filed of the cauſe of action. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21. *Geo.* 2. *c.* 3.

(*i*) *Hil.* 5 *Geo.* II. C. B. *Hayne* and *Cane.*

The

The form of an affidavit of a debt in order to hold the defendant to bail.

Common Pleas.

H. H. of, *&c.* maketh oath, that *G. W.* late of, *&c.* is (*k*) juſtly and truly indebted to this deponent in the ſum of 200 *l.* on one bond or obligation under the hand and ſeal of the ſaid *G. W.* bearing date, *&c.* whereby the ſaid *G. W.* is bound to this deponent in the penal ſum of 400 *l.* conditioned for the payment of 200 *l.* and intereſt to this deponent, on the day of laſt paſt. *The form of the affidavit.*

Sworn, &c.

Plaintiff, tho' convicted of perjury, may make an affidavit of debt, ſufficient to hold defendant to bail, tho' he cannot be a witneſs. *Barnes* 116.

Affidavit of debt on a ſingle ſheet made in three cauſes not applicable to any one; there ſhould be an affidavit on ſtamps in each cauſe, to hold defendant to bail; and therefore common appearances ordered to be excepted. *Barnes* 115.

This affidavit may be made before any judge of this court, or commiſſioner authoriſed to take affidavits in this court, or before the officer, who iſſues the writ or his de- *Before whom the affidavit to be made.*

(*k*) *In* for *is*, common appearance ordered, 2 *Wils.* 224.

puty;

puty; and for which affidavit 1 *s.* above the ſtamp-duties ſhall be paid, and no more. *Stat.* 12 *Geo. c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3.

Affidavit by adminiſtrator, that defendant is indebted in 40 *l. as plaintiff believes*, and *as appears* by note; judge who had ordered a *common* appearance, to be re-attended. *Barnes* 74.

Affidavit made by a third perſon muſt be (*l*) poſitive. *Barnes* 87, 91.

Affidavit by a third perſon, that defendant was indebted, as appears by a ſtated account, (*m*) *inſufficient*. *Barnes* 100.

Affidavit that defendant was indebted if the ſhip *Suſſex* was not *unavoidably* loſt, *prima facie* ſufficient, but affidavits read on both ſides controverting the fact. *Barnes* 87.

Affidavit that defendants were indebted *jointly*, not ſufficient to hold them to bail *ſeverally*. *Barnes* 70, 71.

Affidavit of one convicted of felony, not ſufficient to hold to bail, and not to be ſupplied by ſubſequent affidavits. *Barnes* 79. *Praſt. Reg. C. P.* 49. 2 *Wilſ.* 225.

In caſe of bankruptcy affidavit of the debt muſt be *poſitive*, unleſs it appears that bankrupt refuſes to make the ſame. *Barnes* 91.

(*l*) But in the caſe of an executor *belief* is ſufficient. *id. ib.*

(*m*) But made *good* by another affidavit, that defendant owned the account. *id. ib.* So in caſe of a bond. "That money *appears* due, and that defendant *owned* the debt a year and a half ago." *Barnes* 82.

Obligee,

Obligee, in a bond conditioned to pay obligor, rent due from leſſee, held to bail, upon obligor's affidavit, that the leſſee was indebted to him in 2300*l.* for arrears of rent. 3 *Wils. Rep.* 154.

By the general rule and practice of this court, affidavits taken before attornies (as commiſſioners) in cauſes, wherein they were concerned for the parties in whoſe behalf ſuch affidavits were made, have been deemed inſufficient. See *Barnes* 45.

Affidavit to hold to bail, or of ſervice of proceſs, may be made before plaintiff's attorney, if a commiſſioner.

But an affidavit made in order to hold the defendant to bail before proceſs ſued out, or an affidavit of ſervice of proceſs where only a common appearance is required, may be ſworn before the plaintiff's attorney, being a commiſſioner, and may be made uſe of for the purpoſe aforeſaid. *Paſ.* 13 *Geo.* 2. See *Barnes* 60. *Pract. Reg. C. P.* 12.

Matter of bail examinable by the court.

Notwithſtanding the plaintiff makes an affidavit of his debt, or other cauſe of action, yet the matter of bail is examinable by the court.

On defendant's affidavit, that he *believed* the whole debt would appear to be paid, common appearance was allowed. *Barnes* 72.

Plaintiff leaſed to *Steven* lands in *Ireland*, defendant became bound to plaintiff by bond in penalty of 5000*l.* conditioned for *Steven*'s payment of rent to plaintiff; upon failure he made affidavit, that 2300*l.* was due to him for arrears of rent under ſaid leaſe; it was by three judges, ſufficient to hold defendant to bail. 3 *Wils.* 154.

The

The next thing is to make out a *Præcipe* for the filacer, which you muſt ſuit to the nature of your action, according to the following precedents.

A Præcipe *in debt.*

Middleſex. Command *G. W.* late of *Weſtminſter* in your county, eſq; (*n*) otherwiſe called *G. W.* of *Weſtminſter* in the county of *Middleſex*, eſq; that he render to *H. H.* 400*l.* which he owes him, and unjuſtly detains.

Ret. on the morrow of All Souls.

J. B. [*the attorney*]
19 *Aug.* 1777.
Affidavit for 200*l.*

The Capias *thereon.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take *G. W.* late of *Weſtminſter* in your county, eſq; (*o*) otherwiſe called, (*&c.*)

Alias dict' *not neceſſary.*

(*n*) The *Alias dict'* is uſed where the debt ariſes by ſpecialty, but it is ſaid not to be neceſſary to be inſerted, and that it may be and is better left out, and was ſo adjudged in this court in lord chief juſtice *Eyre*'s time, in an action upon a bail bond, *Darby* againſt *Minſhull.*

On a Latin *bond the* Alias dict', *if uſed, muſt be in* Latin.

If the action be in debt on a bond, and the Obligation is in *Latin*, the *Alias dict'* (if inſerted) muſt be alſo in *Latin*; as thus, Command *John Doe*, late of *London*, gentleman, otherwiſe called *Johannem Doe de London generoſum. Barnes* 241. *Pract. Reg. C. P.* 322. *Rep. & Caſ. of Pract. C. P.* 91.

(*o*) See the note in the former page.

if

if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter*, on the morrow of *All Souls*, to anſwer *H. H.* of a plea, that he render to the ſaid *H. H.* four hundred pounds which he owes him, and unjuſtly detains, as it is ſaid; and have there this writ. Witneſs Sir *William De Gray*, knight, *at Weſtminſter*, the 7th day of *July* in the ſeventeenth year of our reign.

Præcipe *in debt againſt two defendants.*

Middleſex. Command *W. C.* late of the pariſh of St. *Clement Danes* in your county, tallow-chandler, that he render to *W. D.* 30*l.* which he owes him, and unjuſtly detains. Command *C. M.* late of, *&c.* that he render to the ſaid *W. D.* 56*l.* which he owes him, and unjuſtly detains.

Officina brevium 22.

Ret. &c.

J. R.
10 *Jan.* 1777.

Affidavit againſt { *W. C.* for 30*l.* / *C. M.* for 56*l.*

Fines payable to the king.

On all *Præcipes quod reddat*, if the ſum exceeds forty pounds, a fine is payable to the king in the following proportions:

	l.	*s.*	*d.*
From 40 pounds to 100 marks	0	6	8
From 100 marks to 100 pounds	0	10	0
From 100 pounds to 200 marks	0	13	4
From 133. 6. 8. to 166. 13. 4.	0	16	0
From 166. 13. 4. to 200 pounds	1	0	0

And ſo conſequently for every 100 marks more —	}	0	6 8
And for every 100 pounds more		0	10 0

Wherefore, if you would avoid the fine, draw out a *Præcipe* for a *Capias* in treſpaſs with an *Acetiam*, in debt, in this manner:

Præcipe *for a* Capias *in treſpaſs with an* Acetiam *in debt.*

Middleſex. Capias for *T. D.* againſt *A. S.* late of the pariſh of St. *Martin in the Fields* in your county, ſurgeon, broke the *Cloſe* at *Weſtminſter*; and alſo in a certain plea of debt upon demand for 80 *l.*

Ret' &c.

I. E. by *I. R.* 26 *May* 1777. } Affidavit for 40 *l.*

Common appearance ordered, to be accepted for want of an *Acetiam* in the *Præcipe* for the writ left with the filacer, tho' inſerted in the *Cap. ad reſpond.* which was indorſed for bail. *Barnes* 117.

Capias *thereon.*

GEORGE the third, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take take *A. S.* late of, *&c.* if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter*, on to anſwer *T. D.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *T.* at *Weſtminſter*, and did other wrongs to him, to the great damage of the ſaid *T.* and againſt our peace; and alſo, that the ſaid *A.* anſwer to the ſaid *T.* ac-

cording to the cuſtom of our court of the bench, in a certain plea of debt upon demand for forty pounds; and have there this writ. Witneſs, *&c.*

Middleſex. *Capias* for *L. R.* againſt *L. K.* late of the pariſh of St. *James* in the liberty of *Weſtminſter* in your county, widow, broke the cloſe at *Weſtminſter*; and alſo in caſe upon promiſe for 50 *l.* Præcipe *in treſpaſs, with an* Acetiam *in caſe upon promiſe.*

Ret'

GEORGE the third, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you take, *&c.* (as before); and alſo, that the ſaid *L. K.* may anſwer the ſaid *L. R.* according to the cuſtom of our court of the bench, in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *L. R.* fifty pounds; and have there this writ. Witneſs, *&c.* Capias *thereon.*

London. *Capias*, for *T. W.* againſt *J. M.* late of *London*, gent. and *S. C.* late of *London*, eſq; treſpaſs; and alſo againſt the ſaid *J.* for 90 *l.* upon promiſe; and alſo againſt the ſaid *S.* for 30 *l.* upon promiſe. Præcipe *in caſe againſt two defendants.*

Ret'

Lincoln. *Capias* for *J. P.* againſt *H. B.* late of *Stamford* in your county, grocer, in a plea of treſpaſs and aſſault. Præcipe *in aſſault.*

Ret'

Upon a dangerous aſſault and battery that may require bail, an affidavit muſt be made *On a dangerous battery bail may be*

had on an affidavit and a judge's order. of the fact at large, whereupon a judge will make an order for holding the defendant to bail in ſuch ſum as on the circumſtances of the caſe he ſhall think reaſonable; and then you ſue out a *Præcipe* for a common *Capias*, with an *Acetiam*.

Præcipe *in aſſault with an* Acetiam. *London. Capias* for *W. H.* againſt *J. B.* late of *London*, *Cabinet-maker*, broke the *Cloſe* at *London*; and alſo in treſpaſs and aſſault, to the damage of the ſaid *W.* 200 *l.*

Ret'

Bail by order, on *J. W.*
Affidavit for 100 *l.*

Præcipe *in covenant.* *Middleſex. Capias* for *E. L.* againſt *G. C.* late of *Weſtminſter* in your county, gentleman, otherwiſe called (as in the indenture) in a plea, that he perform to the ſaid *E.* the covenant made between them, according to the force, form, and effect of a certain indenture made between them.

Ret.'

Præcipe *in account as receiver.* *Southampton. Capias* for *T. D.* againſt *J. W.* late of, *&c.* that he render to the ſaid *T.* his reaſonable account for the time in which he was receiver of the money of the ſaid *T.* &c.

As bailiff. If as a bailiff, then as before, to —— for the time in which he was bailiff of the ſaid *T.* in *L.* &c.

If

If as a bailiff and receiver, then —— for the time he was his bailiff in *L.* and receiver of the money of the ſaid *T.* &c. *Bailiff and receiver.*

Lincoln. Command *J. P.* late of *C.* in the county aforeſaid, gentleman, that he render to *O. R.* 60*l.* which are in arrear to him for a certain annuity of 30*l.* which he owes him, and unjuſtly detains, *&c.* Præcipe *in annuity.*

If the defendant lives not in the county wherein you intend to try the action, and the cauſe of action requires bail, you make out a *Præcipe* for a *Teſtatum capias*, which you carry to the filacer for that county in which you intend to try the cauſe; as, ſuppoſe the defendant lives in the city of *York*, and you would try the cauſe in *London*, you make out a *Præcipe* in the following form, which you carry to the filacer for *London.* *Where a* Teſtatum capias *neceſſary.*

London. Capias for *H. P.* againſt *R. J.* late of the city of *York*, bookſeller, broke the cloſe at *London.* Præcipe *for a* Teſtatum capias.

Returnable on the octave of St. Hilary.

City of *York. Teſtatum capias*, and alſo for 200*l.* upon promiſe.

Returnable on the octave of the Purification.

J. R.

Affidavit for 100*l.* 31 *Dec.* 1777.

Teſtatum capias. *GEORGE* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriffs of the city of *York*, greeting. We command you, that you take *R. F.* late of the city of *York*, bookſeller, if he ſhall be found in your bailiwic, and keep him ſafely ſo that you may have his body before our juſtices at *Weſtminſter*, on to anſwer *H. P.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *H. P.* at *London*, and did other injuries to him, to the great damage of the ſaid *H.* and againſt our peace: And alſo, that the ſaid *R.* anſwer the ſaid *H.* according to the cuſtom of our court of the bench, in a certain plea of treſpaſs upon the caſe on promiſe, to the damage of the ſaid *H.* of two hundred pounds. And whereupon our ſheriffs of *London* returned to our juſtices at *Weſtminſter*, at a certain day now paſt, that the ſaid *R.* was not found in their bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *R.* doth lie hid, and run from place to place in your county; and have there this writ. Witneſs, *&c.*

Acetiam.

If the defendant lives in any liberty which the ſheriff cannot enter, you may get the filacer to make out a *Non omittas*, whereupon the ſheriff may enter.

The

The form of a Non omittas.

GEORGE the third, by the grace of God, king of *Great Britain*, *France*, and *Ireland*, defender of the faith, *&c.* To the ſheriff of *L*——, greeting. We command you, that you do not omit by reaſon of any liberty of the liberty of the rape of *D.* in your county, but that you take *S. C.* late of, *&c.* if he ſhall be found in your bailiwic, and that you keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter*, on to anſwer *W. N.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *W.* at *G.* and did other injuries to him, to the great damage of the ſaid *W.* and againſt our peace. And alſo that the ſaid *S.* may anſwer the ſaid *W.* according to the cuſtom of our court of the bench, in a certain plea of debt upon demand for thirty pounds. And whereupon you returned to our juſtices at *Weſtminſter* at a certain day, now paſt, that the bailiff of the aforeſaid liberty, whom you commanded, by virtue of our ſaid writ to you thereupon directed, to take the ſaid *S.* gave you no anſwer thereto; and have there, *&c.*

A Non omittas capias.

Acetiam.

If the defendant cannot be taken on the firſt writ, or ſerved with a copy of it, as the caſe ſhall be, and you don't propoſe to outlaw him, you ſue out a *Capias* by continuance, the *Præcipe* for which is the ſame as before, only this difference, inſtead of

Where the defendant cannot be arreſted on the firſt writ, a Capias *by continuance is to be made out.*

	s.	d.
Cap. *by cont.*	0	10
Duty	2	0
Seal	0	7
	3	5

ſaying, "*Capias* for *T. D.* you ſay, *Capias* "by continuance for *T. D.*" But the writ is exactly the ſame as the firſt, without the diſtinction of *Alias* or *Pluries*.

As the filacer makes out all theſe writs, I think it needleſs to trouble the reader with any more precedents of them.

The day of ſigning the writ to be ſet down on the writ.

Every officer or clerk of this court, who ſhall ſign any writ or proceſs before judgment, to arreſt any perſon thereupon, ſhall, before the ſigning thereof, ſet down, upon ſuch writ or proceſs, the day and year of his ſigning the ſame, which ſhall be entered on the remembrance upon the forfeiture of 10 *l.* *Stat.* 5, 6 *W. & M. c.* 21. §. 3. and 9, 10 *W.* 3. *c.* 25. §. 42. *Stat.* 9 *Geo.* 2. *c.* 35. §. 32. *Pract. Reg. C. P.* 440, 441. *Barnes* 420.

Sum ſworn to, to be indorſed on the writ.

Where the plaintiff's cauſe of action ſhall amount to the ſum of 10 *l.* or upwards, and affidavit be thereof made, the ſum ſpecified in ſuch affidavit ſhall be indorſed on the back of the writ or proceſs, for which ſum, ſo indorſed, the ſheriff or other officer to whom ſuch writ or proceſs ſhall be directed ſhall take bail, and for no more. 12 *Geo. c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3.

The name of the attorney to be ſubſcribed on every writ for arreſting the body, execution and warrant thereon.

Every writ for arreſting the body, writ of execution, and every warrant that ſhall be made out on any ſuch writ or execution, ſhall, before the ſervice thereof, be ſubſcribed or indorſed with the name of the attorney, in a common legible hand, by whom ſuch writ, execution or warrant, ſhall be ſued forth; and if ſuch attorney ſhall not be

the

the attorney immediately retained by the plaintiff, then alſo with the name of the attorney ſo immediately retained. *Stat.* 2 *Geo.* 2. *c.* 23. §. 22.

Every copy of any writ or proceſs, that ſhall be ſerved on any defendant, ſhall before the ſervice thereof be in like manner ſubſcribed or indorſed with the name of the attorney, who ſhall be immediately retained by the plaintiff in ſuch writ or proceſs. *Same ſtat. Vide antea fo.* 76. *And on every copy of any writ to be ſerved on the defendant.*

In caſe the attorney's name be not put to the writ, the act of parliament doth not make the proceſs void; and tho' the attorney may be puniſhed for not putting his name to it, the party ought not to ſuffer. *Barnes* 412, 414. *Rich. Pract. Reg.* 441. but ſee *Barnes* 415, which ſeems *contra.* *But the act doth not make the proceſs void for want thereof.*

The not ſubſcribing or indorſing the name of the attorney on any warrant that ſhall be made out upon any writ, proceſs or execution, ſhall not vitiate the ſame; but ſuch writ, proceſs and execution, and all proceedings thereon, ſhall be as valid and effectual, notwithſtanding ſuch omiſſion, as if the act of 2 *Geo.* 2. had not been made; *Provided* the writ whereon ſuch warrant is made out be regularly ſubſcribed or indorſed according to the ſaid act. *Stat.* 12 *Geo.* 2. *c.* 13. §. 4. *The not ſubſcribing the attorney's name on a warrant doth not vitiate the writ.*

Cap. ad reſpond. teſted in *Trinity*, and returnable in *Hilary* term following, miſſing *Michaelmas* term, is void; and plaintiff is liable to an action of treſpaſs and falſe impriſonment, for he cannot juſtify under a void or irregular proceſs. 3 *Wilſ.* 341.

Of

Of common appearances.

Appearance to be entered with filacer.

COMMON appearances to writs made out by the filacers are entered with the filacers, for which you pay 2 *s.* if one defendant, *viz.* 1 *s.* for the king's duty, and 1 *s.* for entering the appearance, and 4 *d.* for every defendant more than one.

Defendant to appear in eight days.

Where a defendant is ſerved with a copy of a proceſs, he muſt cauſe a common appearance to be entered on the return, or within eight days after ſuch return. *Stat.* 5 *Geo.* 2. *c.* 27.

Or plaintiff may on affidavit of ſervice appear for him and proceed.

And in caſe the defendant ſhall not appear within eight days after the return of ſuch writ or proceſs, the plaintiff, upon making and filing an affidavit of the perſonal ſervice of ſuch writ or proceſs, may enter a common appearance for the defendant, and proceed thereon, as if ſuch defendant had entered the ſame. *Stat.* 12 *Geo.* 1. *c.* 29.

In the Common Pleas,
John Doe,
againſt
Richard Roe, late of *Petersfield*, in the county of *Southampton*, ſadler.

The form of the affidavit.

J. S. of, *&c.* gentleman, maketh oath, that he, this deponent, did, on the day of at *Petersfield* in the ſaid county of *Southampton*, perſonally ſerve the defendant *John Doe* with the writ or proceſs hereunto

hereunto annexed, by ſhewing him the ſaid annexed writ or proceſs, and at the ſame time delivering to him a true copy thereof, on which copy was an *Engliſh* notice in writing of the intent and meaning of ſuch ſervice, as by the ſtatute in that caſe made is required.

Sworn, &c. *J. S.*

Before whom the affidavit is to be made.

This affidavit is to be filed *gratis*, and may be made before any judge of the court, or commiſſioner authoriſed to take affidavits, or before the proper officer for entering the appearance, or his deputy. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3. vide antea. *fol.* 78. the rule of *Paſ.* 13 *Geo.* 2.

An appearance entered by plaintiff for the defendant, according to the ſtatute, by a *wrong* name, *amended after declaration.* 3 *Wilſ. Rep.* 49.

The eight days to appear exclusive of the return day.

The defendant has eight days to enter his appearance, excluſive of the return day, *e. g.* if the writ be returnable on the octave of St. *Hilary*, which is the 20th day of *January*, the plaintiff cannot enter an appearance for the defendant, according to the ſtatute, until the 29th day of *January*.

Irregularity in plaintiff's entering appearance for defendant to be complained of before judgment.

If the plaintiff enters an appearance for the defendant before the time the defendant has to enter his appearance is expired, the defendant muſt complain of this irregularity before judgment is ſigned. *Co. Caſ.* 31, 69, 70, 92, 105, 115, 145. *Rich. Pract. Reg.* 32, 127, 242, 355. *Barnes* 242, 255, 296.

An

An appearance cures all errors and defects in proceſs. *Barnes* 163, 167, 424, 451. 3 *Wilſ.* 141. *S. P.*

Of bail.

In London *or* Middleſex 4 *days to put in bail.*
In any other city or county eight days.

IN *London* and *Middleſex* the defendant has four days, excluſive of the appearance day of the return of the writ, to put in bail; and in any other city or county he has eight days excluſive of the appearance day. *Hil.* 9 *Ann.*

If in town, to put in bail before a judge at his chambers.

If the bail be to be put-in in town, the filacer, or other officer who iſſued out the writ, is to attend, with the attorney and bail, on one of the judges at his chambers, who will take the recognizance, and the filacer or other officer will make an entry of it in his book, which entry he will afterwards draw up in a proper form, if there be occaſion to ſue the bail.

To be entered with the proper filacer.

But care muſt be taken to apply to the proper filacer or officer, in whoſe office the bail ought to be entered; for if the bail be entered in a wrong office, the plaintiff may proceed on the bail-bond, and the defendant, before he ſhall be admitted to plead, ſhall pay full coſts to the plaintiff. *Trin.* 1 *W. & M.*

How on a Teſtatum capias.

And in caſe of a *Teſtatum capias*, bail muſt be entered, and filed with the filacer of that county wherein the action was firſt laid, and not with the filacer of that county wherein the defendant was arreſted; for otherwiſe the bail-bond may be aſſigned; and it is not to be preſumed

preſumed or expected, that the plaintiff's attorney will ſearch with a wrong filacer.

In caſe the proper filacer or officer cannot attend, the recognizance may be taken without him, on a piece of parchment properly ſtampt, *viz.* with a double twelve-penny ſtampt.

And in ſuch caſe you make the entry in this manner:

The form of a recognizance of bail taken before a judge.

London. Capias, *againſt* T. M. *late of* London, *Carpenter, at the ſuit of* W. D. *for* 100*l. upon promiſe, returnable on the morrow of the Holy* Trinity.

Affidavit for 50 l.

Bail, W. S. *of* Pall Mall *in the pariſh of Saint* James *in the liberty of* Weſtminſter *and county of* Middleſex, *eſq;*
C. S. *of the ſame place apothecary.*

The defendant bound in 100 l.
Each of the bail in 50 l.

Taken and acknowledged
the day of
&c. before

J. S. Attorney for
the defendant.

If

If the defendant be not preſent, and does not enter into the recognizance, then the bail are bound in double the ſum the cauſe of action is ſworn to amount unto.

When bail is put in, you give notice thereof in writing to the plaintiff's attorney, as follows:

W. D. plaintiff
againſt
T. M. defendant.

S I R,

Notice of bail put in.

Take notice, that *W. S.* of [*naming the ſtreet and pariſh particularly as in the bail-piece or filacer's book*] eſq; and *C. S.* of, *&c.* apothecary, were this day put in as bail for the defendant in this cauſe.

Your humble ſervant,
J. R.
Attorney for the def.
10 June 1777.

To Mr. S. T. *attorney for the plaintiff.*

If the plaintiff's attorney excepts to the bail, he marks the exception in the filacer's book or on the bail-piece, and gives notice thereof in writing to the defendant's attorney.

If the plaintiff doth not mark the exception on the bail-piece, or in the filacer's book, the bail will become abſolute in 20 days, notwithſtanding he has given notice of exception within the 20 days.

The bail, if excepted to, muſt juſtify in four days, or other bail muſt be added, who can

can juſtify within that time, *vide poſtea*, fol. *Rule Trin.* 3 & 4 *Geo.* 2.

Bail excepted to, and not juſtifying, are as no bail, and cannot render the defendant in their diſcharge. 3 *Wilſ. Rep.* 59.

The defendant's attorney muſt give notice of adding or juſtifying, or both, as the caſe ſhall be, *&c.*

W. D. plaintiff
againſt
T. M. defendant.

S I R,

This day

R. H. of, *&c.* in the county of *Middleſex*, victualler, was added to the bail already put in for the defendant in this cauſe, and, on *Saturday* morning next, the ſaid *R. H.* and alſo *C. S.* one of the bail before put in for the ſaid defendant in this cauſe, will juſtify themſelves as bail in court. *Notice of bail added, and of juſtifying.*

Your humble ſervant,

To Mr. S. T. *attorney for the plaintiff.*

J. S.
attorney for the def.
11 June 1778.

He muſt make an affidavit of the ſervice of the notice, and get a ſerjeant to move for leave to juſtify in our court.

Common Pleas.

W. D. plaintiff
againſt
T. M. defendant

A. S.

Affidavit of the ſervice of the notice.

A. S. clerk to Mr. *J. S.* attorney for the defendant in this cauſe, maketh oath, that he, this deponent, did on *Wedneſday* laſt, being the eleventh day of *June* inſtant, ſerve Mr. *S. T.* the attorney for the plaintiff in this cauſe, with the notice hereunto annexed, by delivering a true copy of the ſaid notice to the ſaid Mr. *T.*

Sworn, &c. *A. S.*

The expence out of pocket is generally as follows:

Putting in bail before a judge.

	l.	*s.*	*d.*	
Duty	0	2	0	
Filacer in ſome counties	0	6	0	
Judge's clerk, in term 5*s.* in vacation	0	12	0	
				1 0 0

Adding,

Filacer	0	5	4	
Judge's clerk	0	2	0	
				0 7 4

Juſtifying in court,

Affidavit of notice	0	2	0	
Serjeant's fee	0	10	6	
Filacer	0	5	4	
Secondary	0	1	0	
Cryers	0	2	6	
				1 1 4
				2 8 8

The

The judges of this court, or any two of them, whereof the chief juſtice to be one, may by commiſſions under the ſeal of the court, from time to time, impower ſuch perſons, other than attornies or ſolicitors, as they ſhall think fit, in any of the counties of *England*, to take ſuch recognizances of bail as any perſon ſhall be willing to make before them, in any action or ſuit depending in this court, in manner and form as the judges of the court have uſed to take the ſame; which recognizance ſhall be tranſmitted to one of the judges, who upon affidavit made of the due taking thereof ſhall receive the ſame, upon payment of the uſual fees: Which recognizance ſhall be of the like effect as if taken *de bene eſſe* before any judge of the court. *Stat.* 4 *W.* & *M. c.* 4. *Vide antea fo.* 34.

Judges may appoint commiſſioners to take bail.

The recognizance to be tranſmitted to one of the judges.

For taking this recognizance the commiſſioner is to take 2 *s.* and no more.

Fee for taking recognizance 2 s

The judges of aſſize may take recognizances of bail, which ſhall be tranſmitted and received as aforeſaid, without oath. *Same ſtat.*

Judges of aſſize may take the recognizance of bail.

The bail may juſtify themſelves by affidavit before the commiſſioner, unleſs they live in *London* or *Weſtminſter*, or within ten miles thereof.

Where bail may juſtify by affidavit.

Bail put in before a judge muſt juſtify in perſon, and cannot juſtify by affidavit.

Bail put in before a judge muſt juſtify in perſon.

Upon this act for taking bail by commiſſioners in the country the court has made ſeveral rules, *viz.*

Of putting in bail before a commiſſioner.

Before any bail ſhall be taken by virtue of this act, a true copy in parchment of the writ, to which the defendant is to put in bail, ſhall be brought to the commiſſioners, and on the ſaid copy the recognizance or bail-piece ſhall be ingroſſed in this or the like form, as the caſe ſhall be.

The recognizance.

Bail, *John Denn* of *Blackbarnſley* in the pariſh of *Settle* in the county of *York*, gentleman, and *Richard Fenn* of the ſame place, gentleman.

The party himſelf in 20*l.*
Each of the bail in 10*l.*

Taken and acknowledged on the day of in the year of our Lord conditionally (or *de bene eſſe*) before me *A. B.* one of the commiſſioners.

The condition of the recognizance.

Condition.

You *(naming the defendant, if preſent)* do acknowledge to owe unto the plaintiff 20*l.* You *(naming the bail)* do ſeverally acknowledge to owe unto the plaintiff the ſum of 10*l.* a-piece, to be levied upon your ſeveral goods and chattels, lands and tenements, upon condition, that if the defendant be condemned in the ſaid action, he ſhall pay the condemnation money, or render himſelf a priſoner to the *Fleet* for the ſame; and if he fail ſo to do, you (*naming the bail*) do undertake to do it for him.

Affidavit to be made of the taking ſuch bail.

Affidavit of the due taking ſuch bail ſhall be made before ſome judge of this court to whom

whom the bail ſhall be tranſmitted, or before ſome perſon having power to take affidavits in cauſes depending in this court. *Paſ. 5 W. & M.*

All bails taken by any commiſſioner within the diſtance of 40 miles from the cities of *London* and *Weſtminſter*, ſhall be tranſmitted to the lord chief juſtice, or one of the judges of the court, within ten days after the taking thereof; and all bails taken by any commiſſioner above the diſtance of 40 miles from the ſaid cities of *London* and *Weſtminſter*, ſhall be tranſmitted within twenty days after the taking thereof, unleſs the juſtices ſhall be on the circuits, and then as ſoon as one of them ſhall return to *London* out of his circuit. *Same rule.*

Bail taken by a commiſſioner within 40 *miles of* London, *to be tranſmitted in* 10 *days; above* 40 *miles in* 20 *days; unleſs*, &c.

And after ſuch tranſmiſſion ſhall be forthwith filed with the proper officer to be entered upon record, otherwiſe ſhall be as no bail, and the plaintiff to be at liberty to proceed on the bail-bond as if no ſuch bail had been put in; and the defendant, in caſe he be admiſſable to plead to the original action, ſhall not be admitted ſo to do, unleſs he firſt pay the full coſts to the plaintiff for the proſecution on the bail-bond, and plead as of the time when the bail ſhould have been duly entered. *Hil. 6 Geo. 1.*

And filed with the proper officer, or plaintiff to proceed on the bail-bond.

And defendant not to be admitted to plead to original action, but on payment of coſts, &c.

Bails taken before commiſſioners and tranſmitted to and allowed by a judge, ſhall be delivered to the clerk of the judge, who ſhall allow the ſaid bail, which clerk ſhall take the fees due to the proper officer for

On bail tranſmitted, judge's clerk to take the fees for the entry.

the entry thereof, and forthwith deliver the ſame to be filed. *Mich.* 13 *Geo.* 1.

No bails to be received or filed, unleſs tranſmitted within the times aforeſaid.

All bails taken before commiſſioners in the country ſhall be tranſmitted and filed with the proper officer, according to the rule *Hil.* 6 *Geo.* 1. And no ſuch bail ſhall be received or filed, unleſs tranſmitted within the reſpective times appointed by the ſaid rule, without leave of the court. *Mich.* 6. *Geo.* 2.

If not filed in time, application to the court; no leave in the treaſury.

If the bail be not filed within the times above directed, application muſt be made to the court; the judges in the treaſury will not give leave to file it, the rule ſaying it ſhall not be filed without leave of the court.

Notice of ſuch bail to be given within 4 days.

Every defendant's attorney ſhall give notice to the plaintiff's attorney of the taking ſuch bail within four days after the caption thereof. *Mich.* 13 *Geo.* 1.

Name of defendant and his bail to be entred in commiſſioner's book.

Every commiſſioner is to have a book for entring the names of the defendant and his bail, and of the plaintiff, as in the bail-piece, and the time of taking thereof; and the name of him by whom ſuch bail ſhall be tranſmitted.

Where plaintiff's attorney to ſearch.

The plaintiff's attorney may repair to ſuch book for the names of the bail, to the end he may inquire of the ſufficiency of them; and if they are found inſufficient, may except againſt them within twenty days after the ſaid bail is tranſmitted, and notice to the plaintiff or his attorney of taking thereof; and in that caſe the defendant muſt either put in better bail, or the cogniſors of ſuch bail muſt juſtify themſelves in open court,

Exception to be within twenty days after bail tranſmitted, and notice.

And then better bail, or bail to juſtify.

court, by affidavit made before the commiſſioner that took the ſaid bail, or by oath made in court, or before one of the judges. *Paſ. 5 W. & M.*

If ſpecial bail be excepted to, the defendant ſhall perfect his bail within four days after exception taken, and in default thereof the plaintiff may proceed on the bail-bond. *Trin. 3 & 4 Geo. 2.* *Bail excepted to, to be perfected within 4 days.*

If the plaintiff excepts to the bail, and the defendant adds further bail, the additional bail muſt juſtify themſelves in court within the four days, without waiting for the plaintiff's excepting to them, for the plaintiff is not bound to except to additional bail; and in default of juſtifying, as aforeſaid, he may proceed on the bail-bond. *Additional bail are to juſtify, tho' not excepted to.*

If the plaintiff except to bail in the vacation, and will not be ſatisfied with juſtification before a judge, the bail muſt juſtify within the firſt four days of the next term at leaſt. It has been held, that a juſtification before a judge was no juſtification but by the plaintiff's conſent. That by the general rule of this court, requiring bail to be perfected within four days after exception, muſt be meant the next four days in term. The fair way is to give notice of a juſtification in court within four days after exception, but 'tis not requiſite. See *Barnes* 111, 112, 115. *Bail excepted to in the vacation to juſtify within the firſt four days of the next term.*

Notice to juſtify muſt be given two days before the day of juſtification; and a *Sunday* ſhall not be reckoned as one of the two days; *What notice to be given of juſtifying.*

notice on the *Saturday* to juſtify on the *Monday* is ſufficient.

Bail cannot juſtify themſelves in court, unleſs they became bail before notice of their juſtification was given. *Mich.* 18 *Geo.* III.

No attorney to be bail.

No attorney of this or any other court, or any perſon practiſing as ſuch, ſhall be bail in any ſuit or action depending in this court. *Mich.* 6 *Geo.* 2.

No ſheriff's officer.

No ſheriff's officer, bailiff, or other perſon concerned in the execution of proceſs, ſhall be permitted or ſuffered to become bail in any action or ſuit depending in this court. *Same term.* It has been held that this rule extends to marſhal court officers, and all officers executing the proceſs of this and all other courts. *Barnes* 110.

Of aſſigning the bail-bond.

In caſe the defendant does not put in bail by the time limited by the courſe of the court, the plaintiff may take an aſſignment of the ſheriff's bail-bond, if he approves of the ſufficiency of the obligors.

Sheriff on requeſt to aſſign bail-bond to plaintiff.

The ſheriff, at the requeſt and coſts of the plaintiff or his lawful attorney, ſhall aſſign to the plaintiff the bail-bond by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two or more credible witneſſes, which may be done without any ſtamp, provided the aſſignment ſo indorſed be duly ſtamped before any action brought thereon. *Stat.* 4 & 5 *Ann. c.* 16. §. 20.

Who may bring an action in his own name.

And if the bail-bond be forfeited, the plaintiff may after ſuch aſſignment bring an action

action thereupon in his own name, and the court may by rule give ſuch relief to the plaintiff and defendant in the original action, and to the bail on the ſaid bond, as ſhall be agreeable to juſtice and reaſon, and ſuch rule of court ſhall have the effect of a defeaſance to ſuch bail-bond. *Same ſtat.*

The aſſignee of a bail-bond muſt bring his action thereupon, in the ſame court in which the original action was commenced, for that court only hath juriſdiction and can take cognizance of the action. 3 *Wilſ.* 348. *Barnes* 117.

Proceedings on bail-bond not ſtayed, where plaintiff has been delayed. *Barnes* 112. Stayed *without* coſts, defendant having ſurrendered before put in ſuit. *Barnes* 117.

Bail-bond not void, penalty thereof exceeding double the ſum due. *Barnes* 159.

When bail-bond may be put in ſuit.

No bail-bond taken in *London* or *Middleſex* ſhall be put in ſuit till four days excluſive of the appearance-day of the return of the writ on which the bail-bond was taken; and no bail-bond taken in any other city or county ſhall be put in ſuit till after eight days excluſive of the appearance-day of the return of the proceſs, and all proceedings to the contrary thereof ſhall be ſet aſide with coſts. *Hil.* 9. *Ann.*

If the writ, for example, in a country cauſe be returnable on the morrow of *All Souls*, defendant has to 14 *Nov.* to put in bail; and the bail-bond cannot be put in ſuit, till 15 *Nov.* See *Barnes* 77, 78.

Rule for ſheriff to return the writ.

If the plaintiff does not approve of the bail taken by the ſheriff, he may give the ſheriff a rule to return the writ, and on his returning a *Cepi corpus* he may give him a like rule to bring in the (*a*) body, and in default thereof may have an attachment againſt him.

And like to bring in the body.

Sheriff not returning a writ within ſix days after rule, to pay coſts.

If any ſheriff, under-ſheriff, or his deputy, or any other officer having the return of any proceſs iſſuing out of this court, or of any precept or warrant thereupon, ſhall neglect or refuſe to return the ſame within ſix days after ſervice of a rule of this court for that purpoſe, ſuch ſheriff, under-ſheriff, *&c.* ſhall be liable to pay the coſts occaſioned by ſuch neglect. *Hil.* 8 *Geo.* 1.

An action lies againſt him for a falſe return.

And if the ſheriff returns, that the defendant *Non eſt inventus* in his bailiwic, when he had really arreſted him, an action may be brought againſt him for a falſe return.

If the ſame bail be put in above as given to the ſheriff, the plaintiff may except.

Formerly, If the bail taken by the ſheriff was put in above, the plaintiff could not except againſt ſuch bail; but the ſame ſtood good and abſolute: But now,

In all caſes wherein bail-bonds ſhall be taken, and the ſame bail ſhall be put in above, the plaintiff may except againſt ſuch bail. *Mich.* 6 *Geo.* 2.

(*a*) Where a ſheriff takes a bail-bond, by a rule to bring in the body is meant perfecting bail above; court never expects ſheriff to bring defendant's body into court, by virtue of the common rule. *Barnes* 400.

And

And proceed on the bail-bond, notwithſtanding, if they don't juſtify.

And unleſs the bail ſo excepted againſt ſhall juſtify themſelves, or other bail be added, who ſhall juſtify themſelves within the time limited by the rules of the court, the plaintiff may take an aſſignment of the bail-bond, and proceed thereon, notwithſtanding he excepted to the ſame perſons when put in as bail above. *Barnes* 63, 74.

Declarations in actions on bail-bonds amended as well as any other. *Barnes* 26, 114.

Of ſtaying proceedings on bail-bond.

Where proceedings on a bail-bond are ſtaid upon conſent that it ſhall ſtand as a ſecurity for the plaintiff, if he recovers in the original action, it is always intended and ſhould be ſo expreſſed, that judgment be given upon the bail-bond, and that only execution thereon ſhall be ſtaid; and without ſuch conſent, the court will not ſo ſtay proceeding upon the bail-bond, where the plaintiff has been delayed of a trial. But if ſuch delay is through his own neglect, it is otherwiſe. Where the defendant dies before judgment could be obtained againſt him in the original action, the court will ſtay proceedings on the bail-bond; but if the defendant lives ſo long after the arreſt, that if he had put in bail in time the plaintiff could have obtained judgment and execution againſt him, the court will not ſtay proceedings on the bail-bond. In like manner, if the defendant becomes a bankrupt and obtains his certificate, the court will ſtay proceedings on the bail-bond.

One bail eſteemed as no bail.

Two perſons at leaſt muſt become bail for the defendant; the putting in one bail only is eſteemed as no bail, not even ſufficient to ground a ſurrender upon, tho' it be done immediately; and the plaintiff in ſuch caſe may proceed on the bail-bond notwithſtanding the ſurrender; for the defendant cannot be ſurrendered until the bail is complete. *Barnes* 60, 61, 67, 105. *Pract. Reg. C. P.* 84, 85. *Plowd.* 69. *Cr. El.* 672. *pl.* 31.

Whether defendant can ſurrender till bail is complete.

But where a defendant, after having obtained a judge's order for time to put in and perfect bail, put in bail and ſurrendered himſelf to the *Fleet* in diſcharge of his bail, without previouſly perfecting his bail by a juſtification; the court held it to be regular. Before a ſurrender defendant is delivered to his bail, and ſuppoſed to be in their cuſtody; by the ſurrender the cuſtody is altered, and the defendant is in priſon; the worth and ſubſtance of the bail, who by the ſurrender are diſcharged, is totally immaterial. *Barnes* 111, 117. but 5 *Wilſ. Rep.* 59. which ſeems *contra.*

Debt on recognizance of bail, writ to be ſerved four days before return.

If an action of debt be brought on a recognizance of bail, the writ muſt be ſerved four days before the return; and the bail may ſurrender the principal on the *Quarto die poſt* of the return *ſedente curia*, but not after the court is riſen. *Rep. & Caſ. Pract. C. P.* 18.

What time to ſurrender thereon.

No action on recognizance of bail, pend-

Though an action of debt on a judgment may be brought pending a writ of error in the original action, and the court will let

the

the plaintiff proceed to judgment, and only ſtay execution till the writ of error is determined; yet if an action of debt be brought on a recognizance of bail pending a writ of error in the original cauſe, the court will ſtay proceedings in ſuch cauſe without the bail giving judgment, for by the judgment the bail would be barred from ſurrendering the principal. *Pract. Reg. C. P.* 83.

ing a writ of error in the original cauſe.

If the plaintiff proceeds by *Scire facias* againſt the bail, in caſe of one *Scire facias* returned *Scire feci*, the bail may ſurrender the principal on the appearance day of the return of the *Scire facias*; and in caſe of two *Scire fatias's* with *Nihils* return'd, the ſurrender muſt be on the appearance-day of the return of the laſt *Scire facias*, *ſedente curia*. See *Barnes* 75, 76.

When bail may ſurrender on Sci. fa'.

If the defendant dies after a *Ca. ſa.* returned, though before either a *Sci. fa.* or an action of debt be brought, the bail are bound and not relievable; for after the *Ca. ſa.* returned, the recognizance is forfeited by law, and all further time allowed for ſurrendering the principal, as is above mentioned, is merely *ex gratia*, and where there is a poſſibility of ſurrendring the principal, which by his death is become impoſſible. See *Barnes* 107.

Bail bound by death of defendant if Ca. ſa. *returned.*

A *Capias ad ſatisfaciendum* againſt the principal in order to charge the bail, ſhould be left with the ſheriff four days before the return. *Barnes* 64.

Ca. ſa. *in order to charge the bail ſhould lie in the ſheriff's office four days,*

Such *Capias ad ſatisfaciendum* ſhould have fifteen days between the *Teſte* and return;

and have fifteen days be-

Barnes

tween Teſte *and return.*

Barnes 76. See *Rep. and Caſ. of Pract. C. P.* 114. *Pract. Reg. C. P.* 377. *Vide antea fol.* 79.

Plaintiff ſhall looſe his bail in caſe he declares differently from his writ. 2 *Wilſ.* 93 3 *Wil. Rep.* 61. See id. 141.

Bad returnable pending a writ of error.

A *Capias ad ſatisfaciendum* returnable at a time when a writ of error is depending, is not a ſufficient foundation to proceed againſt the bail. *Barnes* 83.

Bail can't be witneſs for the defendant.

One who is bail cannot be a witneſs in the cauſe for his principal; therefore if the defendant ſhould have occaſion to examine one of his bail has a witneſs at the trial, he muſt make an affidavit that ſuch bail is a material witneſs for him in the cauſe, and thereupon move the court that ſuch bail may be ſtruck out of the bail-piece, on adding and juſtifying another in his ſtead. See *Barnes* 69.

Bail jointly and ſeverally for 140l. *verdict for* 300l. *each ſhall pay* 140l.

In an action of aſſault and battery the plaintiffs procured a judge's order to hold the defendant to bail for 140 *l.* whereupon the defendant became bound in 280 *l.* and the bail jointly and ſeverally in 140 *l.* The plaintiffs had a verdict for 300 *l.* and brought ſeparate actions on the recognizance againſt the bail. The bail moved the court that on payment of one ſum of 140 *l.* and coſts, proceedings might be ſtayed, and compared this to an action on a bond; but the plaintiffs inſiſted, that there is a difference, for in a bond the condition is to pay the money; and if one obligor pays it, the other ſhall be diſcharged, for the condition is complied with; but in a recognizance the con-

dition is not satisfied till the damages recovered be paid, or the defendant surrendered. And it was held, that the bail being jointly and severally bound, the actions against them could not be discharged unless the condition of the recognizance was performed, *viz.* that the defendant should pay what was recovered, or surrender himself to the *Fleet*. *Calvera* 9. *& Ux.* v. *Pinhero*, *Mich.* 12 *G.* 2. *Pract. Reg. C. P.* 88. *Barnes* 76, 77.

Of Declarations.

THE next thing the plaintiff's attorney has to do, is to prepare his declaration:

And note, That if the Action be in — *Summonitus* and *attachiatus.*

Debt,	*Account*,
Detinue,	*Annuity*, or
Covenant,	*Replevin*,

It must be said in the Declaration, the defendant was summoned to answer, *&c.*

If the action be in

Case	*Trover*, or
Trespass,	*Ejectment*,

Then the declaration is, that the defendant was attached to answer, *&c.*

On a common *Clausum fregit*, the plaintiff may declare in any county, or for any cause of — *On a* Clausum fregit *may declare in any*

county, or for any action.

of action, for that proceſs is only to bring the party into court. *Pract. Reg. C. P.* 136, 138. *Rep. and Caſ. of Pract. C. P.* 75.

The like on a Clauſum fregit, *with an* Acetiam.

On a *Clauſum fregit* with an *Acetiam* in debt, caſe, or any other action, the plaintiff may declare in any county, or for any cauſe of action whatſoever, but then he will loſe his bail. *Rep. and Caſ. of Pract. C. P.* 58. *Pract. Reg. C. P.* 137.

Plaintiff ſhall looſe his bail, when he declares differently from his writ, as for inſtance, if he ſues out a writ in his own right, and declares as executor, the court will vacate and diſcharge the bail, and order plaintiff to accept of a common appearance. 3 *Wilſ.* 61.

On a Præcipe quod reddat *muſt declare in debt, except it be by the by.*

In a *Præcipe quod reddat* in debt the plaintiff can declare in no other action but debt, except he deliver a declaration by the by, and in that caſe he muſt firſt deliver a declaration in the original action. *Id. ib.*

The like on an attachment of privilege.

On an attachment of privilege *de placito debiti*, the plaintiff cannot declare in caſe, or for any cauſe of action but debt, unleſs the declaration be delivered by the by, and in that caſe the plaintiff muſt firſt declare in debt, for an attachment of privilege is in the nature of a ſpecial original.

On declaration by baron and feme, the huſband can't declare by the by at his own ſuit.

If an action be brought by baron and feme, and a declaration be delivered, in that action, the huſband cannot thereupon deliver a declaration by the by at his own ſuit.

Declaration by the by when to be delivered.

A declaration by the by cannot be regularly delivered after the term in which the writ was returnable.

When

When you have drawn the declaration, for your aſſiſtance, wherein you may have recourſe to the following precedents, you ingroſs a copy of it on treble penny ſtamped paper, and deliver it to the defendant's attorney, who muſt pay you for the ſame at the rate of 4 *d.* *per* ſheet, (reckoning ſeventy-two words to a ſheet) beſides the king's duty, and eight-pence for filing his warrant of attorney, and then you give a rule for the defendant to plead, with the ſecondary of that prothonotary with whom you enter your proceedings; for this rule you pay 1 *s.* 10 *d.* *viz.* 1 *s.* 6 *d.* for the king's duty, and 4 *d.* to the ſecondary for the rule. *Of delivering the declaration.*

Notice to plead given to defendant, after delivery of declaration without ſuch notice, was held good, though not given at time of delivery of declaration, or endorſed thereon. 2 *Wilſ.* 137.

Where the defendant's attorney, after a diligent inquiry could not be found, it hath been held ſufficient to leave the declaration in the office, and to give notice thereof to the defendant himſelf. *Pract. Reg. C. P.* 126. Where neither the defendant nor his attorney can be found, the court on application will order notice, *&c.* in the office to be good, unleſs the bail, if any, ſhew cauſe to the contrary. *Barnes* 308. *Of delivering declaration where defendant's attorney cannot be found.*

Before the plaintiff's attorney can ſign judgment, he muſt by note in writing demand a plea of the defendant's attorney, except where the plaintiff has entered an appearance *Plea to be demanded in writing.*

for

for the defendant. Notice in the office, *Mich.* 1 *Geo.* 2.

Plaintiff has till the end of the ſecond term, to deliver his declaration.

Upon proceſs returnable the firſt, or any other return of a term, the plaintiff has time to the end of the next enſuing term to deliver his declaration to the defendant's attorney, or to leave the ſame in the office; and the defendant's attorney (having entered his appearance) may, at the end of the enſuing term, or in four days after, give a rule for the plaintiff to declare, and having demanded a declaration by note in writing of the plaintiff's attorney, may at any time in the vacation of ſuch enſuing term, after the rule for declaring is out, ſign his *Non proſ.* for want of a declaration, and not afterwards; and the plaintiff ſhall not, without leave of the court, have any longer time to declare than as aforeſaid, other than the time limited by the defendant's rule. *Hil.* 9 *Annæ.*

Defendant after ſecond term may give a rule to declare.

Declaration to be demanded in writing.

And for want thereof Non proſ. *to be ſigned.*

Declaration to be demanded of the agent, and not of the country attorney.

On a rule given to declare, a declaration was demanded of the attorney in the country, by his own agreement, but the *Non proſ.* ſigned for want of a declaration was held to be irregular, for the declaration ſhould have been demanded of the agent in town. *Pract. Reg. C. P.* 124. *Barnes* 311.

Where no rule, the plaintiff has till the eſſoin-day of the 3d term to declare.

Where the defendant at the end of the ſecond term does not give a rule for the plaintiff to declare, the plaintiff has till the eſſoin-day of the third term to deliver or file his declaration. *Rep. and Caſes of Pract. C. P.* 12. *Pract. Reg. C. P.* 121.

After

After *Superſedeas* ordered for want of plaintiff's proceeding to judgment within *three* terms after declaration, and before defendant could be diſcharged, ſame plaintiff cauſed him to be charged with a new declaration, which court held regular, being for a different cauſe of action. *Barnes* 500.

Plaintiff has two terms to declare after bail complete.

It has been held, that the plaintiff has two terms to declare in, after bail is put in and perfected. *Pract. Reg. C. P.* 121.

Where the plaintiff appears for the defendant.

Where a copy of a proceſs is ſerved on any defendant, and an appearance is entered for ſuch defendant by the plaintiff's attorney, purſuant to the late act * for preventing frivolous and vexatious arreſts, the plaintiff's attorney ſhall leave a copy of the declaration in the office, and give notice thereof to the defendant, by delivering an *Engliſh* notice written in a ſecretary-hand to ſuch defendant, or by leaving the ſame at his laſt or moſt uſual place of abode, ſignifying the nature of ſuch action, at whoſe ſuit it is proſecuted, and in whoſe office ſuch declaration is left; and from the time of giving ſuch notice ſuch declaration ſhall be deemed well delivered to ſuch defendant. *Mich.* 1 *Geo.* 2.

Declaration to be left in the office.

And notice left for def. at his laſt place of abode.

Declaration well delivered from time of notice.

And if def. don't plead may ſign judgment without further calling ſo a plea.

And in caſe ſuch defendant, after ſuch notice given, ſhall not plead by the time the rule for pleading is out, the plaintiff in ſuch caſe may ſign his judgment (a rule to plead being firſt given) without any other or far-

* 12 *Geo. c.* 29. perpetuated by 21 *Geo. 2. c.* 3.

ther calling for a plea. *Same rule.* *See* Tit. *Inquiry.*

Where the plaintiff appears for the def. he may proceed without taking notice of any attorney the def. may have employed.

Where the defendant fails to enter his appearance, and the plaintiff enters it for him, he may proceed according to the above rule, tho' the defendant may have employed an attorney to appear and plead for him, and have given the plaintiff notice of it, and the plaintiff need not call on such attorney for a plea. *Rep. and Caſ. of Pract. C. P.* 50, 116. *Barnes* 249, 250.

When the def. ſhall plead in four days.

On all proceſs returnable the firſt, ſecond or third return of any term, if the plaintiff declares in *London* or *Middleſex*, and the defendant lives within twenty miles of *London*, the defendant ſhall plead within four days *after* ſuch declaration delivered, with notice to plead accordingly; without any imparlance. *Mich.* 3 *Geo.* 2. *Trin.* 8 *Geo.* 3.

When decl. may be delivered de bene eſſe.

When the def. has eight days time to plead.

And in caſe the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant ſhall plead within eight days *after* the declaration delivered with notice to plead, without imparlance; and in default of pleading as afore-

---

The four or eight days to plead are inclusive, and the notice may be given accordingly.

Though by the word *after* in the above rules they ſeem to exclude the day of the delivery of the declaration, the conſtruction of them muſt be governed by the rule to plead, which is incluſive of the day on which it is given. And therefore if a declaration be left in the office *de bene eſſe* on the firſt day of a term, notice thereof may be given on the ſame day to plead within the firſt four days of the term, (or firſt eight days of the term, if the defendant has eight days to plead) and not ſay within the firſt four (or eight) days after the declaration delivered.

ſaid,

ſaid, the plaintiff may ſign his judgment, and all ſuch declarations may be delivered *de bene eſſe*. *Same rules.*

Such declarations to be delivered with notice when to plead.

And all declarations in *London* and *Middleſex* delivered purſuant to the above rule, on proceſs returnable the firſt or ſecond return of any term, where the defendant lives within twenty miles of *London*, ſhall be delivered, with *notice* to plead to ſuch action within four days *after* ſuch declaration delivered; and all declarations where the plaintiff declares in any other county, or the defendant lives about twenty miles from *London*, ſhall be delivered with *notice* to plead within eight days *after* ſuch declaration delivered. *Paſch.* 3 *Geo.* 2.

Decl. may be delivered de bene eſſe *before time for bail or appearance expired.*

The plaintiff may deliver a declaration *de bene eſſe*, before the time the defendant has to put in bail, or enter a common appearance, is expired, but not afterwards.

It ſeems a doubt, whether notice of a declaration being filed is neceſſary, where bail is put in. See 3 *Wilſ.* 147.

Whether declaration de bene eſſe, *and proceeding thereon, will be waiver of exception to bail.*

Held that delivering a declaration, after the time for putting in bail is expired, as a declaration *de bene eſſe*, is no waiver of the exception to bail; but demanding a plea thereupon is a waiver of the exception; it is admitting the defendant to be in court, and in a condition to plead. *Trin.* 16 & 17 *Geo.* 2. *C. B. Liſter* v. *Wainhouſe*. *Barnes* 92.

On declaration de bene eſſe *judgment can't be ſigned till appearance entered.*

In an action which requires only a common appearance, if a declaration be delivered *de bene eſſe*, the plaintiff can't ſign judgment for want of a plea, till the time the defen-

defendant had to enter his appearance is expired; as ſuppoſe the *capias* is returnable *Octab. Hilar.* and a declaration is left in the office *de bene eſſe* on the 23d of *January*, and notice and a rule to plead is given the ſame day, the rule will be out on the 26th, but as the defendant has eight days to appear, excluſive of the return-day, the plaintiff can't ſign judgment for want of a plea, till the 29th of *January*, and then an appearance muſt be firſt entered, either by the defendant or the plaintiff for him.

Indorſement on declaration de bene eſſe.

Where a declaration is left in the office *de bene* * *eſſe*, there ſhould be an indorſement on it, ſignifying that it is left conditionally, or *de bene eſſe*. *Barnes* 257.

Decl. to be delivered four days excluſive before the end of the term.

To have a plea the ſame term, the declaration ſhould be delivered four days (excluſive of the day of the delivery) before the end of the term.

All declarations and pleadings muſt be delivered, and all demands thereof, and all notices given, before nine of the clock in the evening. *Mich.* 9 *Geo.* 2.

Decl. delivered to def. his attorney being known, is bad.

A copy of a declaration delivered to the defendant, his attorney being known, is a bad delivery of the declaration.

---

* But on the court's looking into the general rules of *Mich.* 3 *Geo.* 2. and *Eaſt.* 3 *Geo.* 2. they held that it was not neceſſary to indorſe notice to plead on the declaration where it is filed *de bene eſſe*, and notice thereof given to defendant. *Barnes* 303.

If

If the attorney be not known, the declaration may be left in the office, and notice given to the defendant. *Barnes* 308. See *Id.* 335.

Must be delivered to the agent, and not to the country attorney.

Where a country attorney is concerned for the defendant, the declaration or notice of its being left in the office (as the caſe ſhall be) muſt be given to the agent, and not the country attorney, but where the declaration has been accepted in the country, and *Oyer* of the bond demanded and given there, and a plea demanded there, the court has refuſed to ſet aſide the judgment for want of a plea, the defendant having agreed to this method of proceeding by accepting the declaration, *&c.* in the country. *Barnes* 306.

Declaration is only well delivered from the time of notice.

The declaration is only well delivered from the time of notice, and therefore if notice of the declaration be given after the rule to plead is given, it is irregular. *Pract. Reg. C. P.* 131. *Rep. & Caſ. Pract. C. P.* 111. *Barnes* 304.

Notice to plead in four days when it ſhould be eight, irregular.

If ſuch defendant has eight days to plead, and the declaration be delivered with notice to plead in four days, it is irregular, though judgment be not ſigned till the eight are expired. *Barnes* 302, 303. *Pract. Reg. C. P.* 135.

Two declarations, one againſt huſband and wife, and the other againſt wife only, cannot be conſolidated. 2 *Wilſ.* 227.

Notice need not ſet forth the whol declaration.

On a motion to ſet aſide judgment, for that the notice of the declaration mentioned, that the declaration was for goods ſold and delivered, and materials found, whereas there was a count in the declaration for money

lent, which was not mentioned in the notice. Upon reading the rule of court, which is, that the plaintiff ſhall give notice of the nature of the action, the notice was held to be good; and it was ſaid, that it is not neceſſary to ſet forth the whole declaration. *Turner*, adminiſtrator, v. *Bourns*, *Paſch.* 2 *Geo.* 2. *Pract. Reg. C. P.* 132.

And it was held, that it is only neceſſary to ſet forth the nature of the action, as in debt or in caſe, without mentioning for what, for that will appear by the declaration itſelf. *Skin* againſt *Gwinel*, *Paſch.* 5 *Geo.* 2. *Pract. Reg. C. P.* 133. *Barnes* 299. *S. P.*

But where the notice was a declaration *in an action of treſpaſs on the caſe* without further deſcription, it was held inſufficient; the intent of the rule being that the defendant ſhould know what he was ſued for. Actions in the caſe for contracts, and for torts are widely different; on ſeveral undertakings and promiſes, or at leaſt on promiſe ſhould have been added. *Hil.* 29 *Geo.* 2. *Taylor* againſt *Oxley*. *Barnes* 498. 2 *Wilſ.* 84.

Irregularity in delivering declaration to be complained of two days before executing inquiry.

If there be any irregularity in the delivery or notice of the declaration, the defendant muſt apply to the court two days before the day appointed for executing the writ of inquiry. *Pract. Reg. C. P.* 127.

Declaration under peculiar circumſtances amended on payment of coſts, and terms put on defendant, tho' leave to withdraw declaration, and declare *de novo* refuſed. *Barnes* 25, 26.

Prece-

Precedents of Declarations.

In the Common Pleas.

(a) Eaſter *Term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* *P.* *F.* late of *Weſtminſter* in the ſaid county of *Middleſex*, doctor of phyſic, *(b)* otherwiſe called *P. F. de paroch. ſancti Martini in Prat. Weſtmonaſterii, Medicinæ Doctor*, was ſummoned to anſwer *J. H.* of a plea, that he render to him ſeventy pounds which he oweth to him, and unjuſtly detaineth, and ſo forth. And wherefore the ſaid *J.* by *A. B.* his attorney ſaith, that whereas the ſaid *P.* on the nineteenth day of *April* which was in the year of our Lord one thouſand ſeven hundred and fifty-eight, at *Weſtminſter* aforeſaid in the county of *Middleſex* aforeſaid, by his certain writing obligatory acknowledged himſelf to be bound to the ſaid *J.* in the aforeſaid ſum of ſeventy pounds, to be paid to the ſaid *J.* when he the ſaid *P.* ſhould be thereunto required, Nevertheleſs the ſaid *P.* although often required, hath not paid the ſaid ſeventy pounds to the *On a bond.*

(*a*) Title of declaration made agreeable to truth of fact. 2 *Wilſ.* 256.

(*b*) As to the *Alias dict. Vide antea fo.* 80.

ſaid *J.* but hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to him; wherefore the ſaid *J.* ſaith that he is injured, and hath damage to the value of twenty pounds; and thereof he bringeth ſuit, and ſo forth. And he bringeth here into court the aforeſaid writing, which teſtifieth the ſaid debt in form aforeſaid, the date whereof is the day and year above-mentioned, and ſo forth.

In the Common Pleas.

Michaelmas *Term in the ſeventeenth year of king* George *the third.*

On a Mutuatus.

London, *to wit*, *W. S.* late of *London*, eſq; was ſummoned to anſwer *R. F.* gent. of a plea, that he render to him 50*l.* which he oweth him, and unjuſtly detaineth, *&c.* And whereupon the ſaid *R. F.* by *L. R.* his attorney, ſaith, that whereas the ſaid *W. S.* on the day of in the year of our Lord one thouſand ſeven hundred and fifty-ſeven, at *London* aforeſaid in the pariſh of St. *Mary le Bow* in the ward of *Cheap*, borrowed of the ſaid *R. F.* the ſaid 50*l.* to be paid to the ſaid *R. F.* when he the ſaid *W. S.* ſhould be thereunto required; yet the ſaid *W. S.* although often required, hath not yet paid the ſaid 50*l.* to the ſaid *R. F.* but hath hitherto intirely refuſed, and ſtill doth refuſe, to pay him the ſame; wherefore the ſaid *R. F.* ſaith, that he is injured, and has

has damage to the value of 20*l.* and thereof he bringeth ſuit, *&c.*

You ſeldom declare in debt for money borrowed, but where judgment for a debt without bond is confeſſed by virtue of a warrant of attorney, but declare in caſe on an *Indebitatus aſſumpſit.*

In the Common Pleas.

Hilary *Term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* *T. T.* late of *Weſtminſter* in the county of *Middleſex*, dealer in coals, was attached to anſwer *T. D.* in a plea of treſpaſs on the caſe: And whereupon the ſaid *T. D.* by *L. R.* his attorney complaineth, that whereas the ſaid *T. T.* on the firſt day of *January* in the year of our Lord one thouſand ſeven hundred and fifty-ſeven, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, was indebted to the ſaid *T. D.* in the ſum of 100*l.* lawful money of *Great Britain*, for the like ſum of money before that time lent by the ſaid *T. D.* to the ſaid *T. T.* at his ſpecial inſtance and requeſt, and being ſo indebted, he the ſaid *T. T.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed

Indebitatus aſſumpſit *for money lent.*

miſed the ſaid *T. D.* that he the ſaid *T. T.* would well and truly pay the ſaid 100*l.* to the ſaid *T. D.* when he the ſaid *T. T.* ſhould be there-

Breach. unto afterwards requeſted: *Nevertheleſs* the ſaid *T. T.* not at all regarding his ſaid promiſe and undertaking ſo made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *T. D.* in this behalf hath not paid the ſaid ſum of money, or any part thereof, to the ſaid *T. D.* (although to pay the ſame to the ſaid *T. D.* he the ſaid *T. T.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, was requeſted by the ſaid *T. D.*) but the ſaid *T. T.* hath hitherto intirely refuſed, and ſtill doth refuſe, to pay the ſame, to the ſaid *T. D.* to the damage of the ſaid *T. D.* of 120*l.* And thereof he bringeth ſuit, *&c.*

Indebitatus aſſumpſit *for money had and received to the plaintiff's uſe.*

As before, to——For that whereas the ſaid *O. B.* on the day of in the year of his preſent majeſty's reign at the pariſh of in the county of *Middleſex*, was indebted to the ſaid *S. A.* in 30*l.* lawful money of *Great Britain*, for ſo much money by the ſaid *O. B.* before that time had and received to the uſe of the ſaid *S. A.* and being ſo indebted, he the ſaid *O. B.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there

there faithfully promiſed the ſaid *S. A.* that he the ſaid *O. B.* would well and truly pay the ſaid 30 *l.* to the ſaid *S. A.* when he the ſaid *O. B.* ſhould be thereunto afterwards requeſted: *Neverthelefs*, &c. *as before.*

Indebitatus aſſumpſit *for money laid out.*

As before, *to*——For that whereas the ſaid *T. M.* on the day of in the year of his preſent majeſty's reign, at the pariſh of in the county of was indebted to the ſaid *C. M.* in 20 *l.* lawful money of *Great Britain*, for ſo much money by the ſaid *C.* for the uſe of the ſaid *T.* and at his ſpecial inſtance and requeſt before that time paid, laid out and expended, and being ſo indebted, he the ſaid *T.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then there faithfully promiſed the ſaid *C.* that he the ſaid *T.* would well and truly pay the ſaid 20 *l.* to the ſaid *C.* when he the ſaid *T.* ſhould be thereunto afterwards requeſted: *Neverthelefs*, *&c.*

In the Common Pleas.

Eaſter *Term in the ſeventeenth year of king* George *the third.*

On an inland bill of exchange by the drawee againſt the drawer. Lilly's Ent. 44, 55, 90.

London, *to wit.* *T. M.* late of *London*, merchant, was attached to anſwer *J. S.* in a plea of treſpaſs on the caſe: And whereupon the ſaid *J. S.* by *M. C.* his attorney complaineth,

plaineth, that whereas the ſaid *T. M.* on the 17th day of *May* in the year of our Lord 1763, at *London* in the pariſh of St. *Mary Le Bow* in the ward of *Cheap* (he being then a perſon trading, merchandizing, and uſing commerce at *London* aforeſaid) according to the uſage and cuſtom of merchants from the time to the contrary whereof the memory of man is not, made his certain firſt bill of exchange in writing ſubſcribed with his own hand, bearing date the ſame day and year aforeſaid, and directed the ſaid bill of exchange to one *J. H.* (the ſaid *J. H.* then being a perſon trading, merchandizing, and uſing commerce to foreign parts, namely, at) by which ſaid bill of exchange the ſaid *T. M.* required the ſaid *J. H.* twenty-one days after ſight thereof, to pay his ſaid firſt bill of exchange to the ſaid *J. S.* (by the name of *J. S.* merchant at *London)* or order, 112*l.* 5*s.* value of him, with or without advice from the ſaid *T. M. which* ſaid bill of exchange afterwards, that is to ſay, on the 15th day of *May* in the year of our Lord aforeſaid, at aforeſaid, was ſhewn to the ſaid *J. H.* for his acceptance thereof, and the ſaid *J. H.* did not accept the ſaid bill, but then and there refuſed to accept the ſame, of which the ſaid *T. M.* afterwards, that is to ſay, on the fifteenth day of *June* in the year of our Lord laſt mentioned, at *London* aforeſaid in the pariſh and ward aforeſaid, had notice, and by reaſon of the premiſſes, and alſo according to the uſage and cuſtom of merchants, he the ſaid *T. M.* was and became liable to

Bill not accepted.

pay

pay unto the ſaid *J. S.* the ſaid ſum of 112 *l.* 5 *s.* in the ſaid bill of exchange mentioned; and being ſo liable, he the ſaid *T. M.* afterwards, that is to ſay, on the ſame day and year laſt mentioned, at *London* aforeſaid in the pariſh and ward aforeſaid, undertook, and to the ſaid *J. S.* then and there faithfully promiſed, that he the ſaid *T. M.* would well and faithfully pay and ſatisfy to the ſaid *J. S.* the ſaid 112 *l.* 5*s.* in the ſaid bill of exchange mentioned: *Neverthelefs*, &c.

It is uſual and neceſſary to lay diverſe counts in one declaration, where the plaintiff hath various demands againſt the defendant, as on a promiſſory note, for goods ſold, money lent, *&c.* and even where he hath but one demand; as, ſuppoſe for goods ſold and delivered, it will be proper to lay two counts, as an *Indebitatus aſſumpſit*, and a *Quantum valebant*, whereupon if he fails of proving the price agreed on, he may prevail on the *Quantum valebant* upon proving the delivery of the goods, and the value of them at that time; and as to the promiſe in ſuch caſes there is no occaſion to prove it; the law implies it upon proof of the debt.

In the Common Pleas.

Hilary *Term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* R. G. late of the pariſh of St. *Andrew, Holbourn*, in the county of *Middleſex*, druggiſt, was attached *On a promiſſory Note.*

to

to anſwer *S. N.* of a plea of treſpaſs on the caſe: And whereupon the ſaid *S. N.* by *L. R.* his attorney complaineth, that whereas the ſaid *R. G.* on the tenth day of *December* in the ſeventh year of his preſent majeſty's reign, at *Weſtminſter* in the county of *Middleſex*, made his note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year, by which ſaid note the ſaid *R. G.* promiſed to pay to the ſaid *S. N.* or his order, *ten days after* the date of the ſaid note, the ſum of fifty pounds, *for value received by* him the ſaid *R. G.* By reaſon whereof, and alſo by force of the ſtatute in ſuch caſes made and provided, the ſaid *R. G.* became liable to pay to the ſaid *S. N.* the ſaid ſum of 50 *l.* in the ſaid note mentioned, according to the tenor and effect of the ſaid note; and being ſo liable, he the ſaid *R. G.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay to the ſaid *S. N.* the ſaid 50 *l.* in the ſaid note mentioned, according to the tenor and effect of the ſaid note. *And whereas alſo* the ſaid *R. G.* afterwards, that is to ſay, on the firſt of *January* in the year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was indebted to the ſaid *S. N.* in 100 *l.* of lawful money of *Great Britain*, for diverſe goods, wares and merchandizes, by the

Indebitatus aſſumpſit *for goods ſold and delivered.*

the ſaid (*c*) *S. N.* before that time ſold and delivered to the ſaid *R. G.* at his ſpecial inſtance and requeſt; and being ſo indebted, he the ſaid *R. G.* in conſideration thereof, afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay the ſaid 100 *l.* to the ſaid *S. N.* when he the ſaid *R. G.* ſhould be thereunto requeſted. *And whereas alſo* afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, in conſideration that the ſaid *S. N.* had before that time ſold and delivered to the ſaid *R. G.* at his like ſpecial inſtance and requeſt, diverſe other goods, wares and merchandizes, he the ſaid *R. G.* undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would, when he ſhould be thereunto requeſted, well and truly pay to the ſaid *S. N.* ſo much money as the goods, wares and merchandizes laſt above mentioned were at the time of the ſale and delivery thereof reaſonably worth. And the ſaid *S. N.* in fact

Quantum valebant *thereon.*

(*c*) After verdict where the defendant's name is put in the declaration, inſtead of the plaintiff's name, as for inſtance, "*by the ſaid* R. G. before that time ſold and delivered to the ſaid *R. G.* inſtead of the ſaid *S. N.*" the court will reject the defendant's name, as being ſurpluſage. 3 *Wilſ. Rep.* 43. *Com. Rep.* 557. *S. P.* See *Skin* 591. *Sid.* 135. *Stat.* 16 & 17 *Car.* II. *chap.* 8.

ſaith,

ſaith, that the goods, wares and merchandizes laſt above mentioned were, at the time of the ſale and delivery thereof, reaſonably worth other 100 *l.* of like lawful money of *Great Britain*, that is to ſay, at *Weſtminſter* aforeſaid in the county aforeſaid, whereof the ſaid *R. G.* afterwards, that is to ſay, on the ſame day and year laſt above mentioned, there had notice. *And whereas alſo* the ſaid *R. G.* afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter*, aforeſaid in the county aforeſaid, accounted together with the ſaid *S. N.* concerning diverſe other ſums of money before that time due, and unpaid by the ſaid *R. G.* to the ſaid *S. N.* and the ſaid *R. G.* was upon the ſaid account then and there found in arrear to the ſaid *S. N.* in 76 *l.* 12 *s.* 6 *d.* of like lawful money of *Great Britain*; and the ſaid *R. G.* being ſo found in arrear, in conſideration thereof afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay the ſaid 76 *l.* 12 *s.* 6 *d.* to the ſaid *S. N.* when he the ſaid *R. G.* ſhould be thereunto requeſted: *Neverthelefs* the ſaid *R. G.* not at all regarding his ſaid ſeveral promiſes and undertakings ſo made aforeſaid in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *S. N.* in this behalf, hath not paid to the ſaid *S. N.* the ſaid ſeveral ſums of money, or any

Inſimul computaſſet.

Breach.

of them, or any part thereof, (although to pay the ſame to the ſaid *S. N.* he the ſaid *R. G.* afterwards, that is to ſay, on the ſame day and year laſt above mentioned at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted by the ſaid *S. N.*) but the ſaid *R. G.* hath hitherto intirely refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *S. N.* to the damage of the ſaid *S. N.* of 200 *l.* and thereof he bringeth ſuit, *&c.*

It is ſaid, that in an *Inſimul computaſſet* the plaintiff muſt in his declaration lay the very day of the account, and the ſum agreed upon by both parties to be due.

In the Common Pleas.

Hilary *Term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* L. *K.* late of *Weſtminſter* in the county of *Middleſex*, widow, was attached to anſwer *J. B.* eſq; of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* by *S. H.* his attorney complaineth, that *whereas* the ſaid *L.* on the firſt day of *January* in the year of our Lord one thouſand ſeven hundred and fifty-ſeven, at *Weſtminſter* aforeſaid, was indebted to the ſaid *J.* in the ſum of eight pounds and fifteen ſhillings of lawful money of *Great Britain*, for the uſe, occupation and enjoyment of one

Indebitatus aſſumpſit *for the uſe and occupation of a houſe.*

meſſuage, with the appurtenances, of the ſaid *J.* ſituate, ſtanding and being in *Weſtminſter* aforeſaid, for a long ſpace of time then paſt, that is to ſay, for the ſpace of one quarter of a year then paſt, by the ſaid *L.* by the permiſſion of the ſaid *J.* and by, from and under the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *L.* had and enjoyed, and being ſo indebted, ſhe the ſaid *L.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook, and to the ſaid *J.* then and there faithfully promiſed to pay to him the ſaid ſum of money, when ſhe the ſaid *L.* ſhould be thereunto afterwards required: *And whereas alſo* the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *L.* had permitted and ſuffered the ſaid *L.* to have, occupy, poſſeſs and enjoy a certain other meſſuage, with the appurtenances, of the ſaid *J.* ſituate, ſtanding and being in *Weſtminſter* aforeſaid, for a long ſpace of time then paſt, that is to ſay, for the ſpace of one quarter of a year then paſt, undertook, and to the ſaid *J.* then and there faithfully promiſed to pay to him ſo much money as he had reaſonably deſerved to have from the ſaid *L.* for the ſame; and the ſaid *J.* in fact ſaith, that he had reaſonably deſerved to have from the ſaid *L.* for the ſame, another ſum of eight pounds and fifteen ſhillings of like lawful money, that is to ſay, at *Weſtminſter aforeſaid*, where-

Quantum meruit *thereon.*

of

of the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid at *Weſtminſter* aforeſaid had notice: *And whereas alſo* the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid at *Weſtminſter* aforeſaid, was indebted to the ſaid *J.* in the further ſum of ten pounds of like lawful money, for the like ſum of money by the ſaid *J.* before that time, at the ſpecial inſtance and requeſt of the ſaid *L.* and to the uſe of the ſaid *L.* paid, laid out and expended; and being ſo indebted, ſhe the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *J.* that ſhe would well and truly content and pay him the ſaid ten pounds laſt mentioned, when afterwards ſhe the ſaid *L.* ſhould be thereto required: *Neverthelefs* the ſaid *L.* not regarding her ſaid ſeveral promiſes and undertakings ſo made as aforeſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *J.* in this behalf, hath not paid to him the ſaid ſeveral ſums of money, or any of them, or any part thereof, although to pay the ſame to him the ſaid *J.* ſhe the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, was requeſted by the ſaid *J.* but the ſaid *L.* to pay the ſame to him, hath hitherto refuſed, and doth yet refuſe, to the damage of the ſaid *J.* of ten pounds; And thereof he bringeth ſuit, *&c.*

Indebitatus aſſumpſit *for money laid out.*

Breach.

In the Common Pleas.

Eaſter *Term in the ſeventeenth year of the reign of king* George *the third.*

Indeb. aſſ. *for work done and materials found.*

London, *W. H.* late of *London*, woollen-draper, was attached to anſwer *J. B.* of a plea of treſpaſs on the caſe; and whereupon the ſaid *J. B.* by *J. W.* his attorney complaineth, that whereas the ſaid *W. H.* on the twenty-firſt day of *February* in the ſeventh year of his preſent majeſty's reign, at *London* in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, was indebted to the ſaid *J. B.* in 30 *l.* of lawful money of *Great Britain*, as well for work before that time done and performed by the ſaid *J. B.* for the ſaid *W. H.* at his ſpecial inſtance and requeſt, as for divers materials and neceſſary things uſed in and about the ſaid work before that time found and provided by the ſaid *J. B.* at the like ſpecial inſtance and requeſt of the ſaid *W. H.* And the ſaid *W. H.* being ſo indebted, in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. B.* that he the ſaid *W. H.* would well and truly pay the ſaid 30 *l.* to the ſaid *J. B.* when he the ſaid *W. H.* ſhould be thereunto required:

Quantum meruit *thereon.*

And whereas alſo afterwards, that is to ſay, on the ſame day and year aforeſaid, at *London*

don in the pariſh and ward aforeſaid, in conſideration that the ſaid *J. B.* had before that time done and performed other work for the ſaid *W. H.* at his like ſpecial inſtance and requeſt, and had found and provided, at the like ſpecial inſtance and requeſt of the ſaid *W. H.* diverſe other materials and neceſſary things uſed in and about the ſaid laſt mentioned work, he the ſaid *W. H.* undertook, and then and there faithfully promiſed the ſaid *J. B.* that he the ſaid *W. H.* would, when he ſhould be thereunto required, well and truly pay to the ſaid *J. B.* ſo much money as he therefore reaſonably deſerved to have: And the ſaid *J. B.* in fact ſaith, that he did therefore reaſonably deſerve to have of the ſaid *W. H.* other 30 *l.* of like lawful money of *Great Britain*, that is to ſay, at *London* aforeſaid in the pariſh and ward aforeſaid, whereof the ſaid *W. H.* afterwards, that is to ſay, on the ſame day and year aforeſaid, there had notice: *Nevertheleſs*, &c.

In the Common Pleas.

Hilary *Term in the ſixteenth year of the reign of king* George *the third.*

Southampton, *to wit.* *J. S.* late of *Croudall* in the ſaid county of *Southampton*, yeoman, was attached to anſwer *R. D.* in a plea of treſpaſs on the caſe, and where- *For not repairing fences.*

upon the ſaid *R. D.* by *J. L.* his attorney complaineth, That whereas the ſaid *R. D.* on the firſt day of *October* in the ſixth year of his preſent majeſty's reign, was ſeiſed, and is ſtill ſeiſed in his demeſne as of fee, of and in one cloſe called the kitchen-garden, ſituate, lying and being in *Croudall* aforeſaid in the ſaid county of *Southampton*, to which ſaid cloſe called the kitchen-garden, another cloſe in the poſſeſſion, tenure or occupation of the ſaid *J. S.* called the hop-garden, at *Croudall* aforeſaid in the ſaid county of *Southampton*, lieth next and contiguous adjoineth, between which ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, and the ſaid cloſe in the tenure or occupation of the ſaid *J. S.* called the hop-garden, there is now, and time out of mind hath been, certain pales or fences, which part and divide the ſaid cloſes the one from the other. *And whereas* the ſaid *J. S.* and all occupiers and poſſeſſors of the ſaid cloſe called the hop-garden, for the time being, time out of mind were uſed and accuſtomed and ought to make, repair and amend the ſaid pales, and fences between the ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, and the ſaid cloſe of the ſaid *J. S.* called the hop-garden, with all neceſſary reparations and amendments, as often as need ſhould be or require, leſt any cattle out of the ſaid cloſe called the hop-garden into the ſaid cloſe called the kitchen-garden ſhould eſcape and enter, and do damage there: *Nevertheleſs* the ſaid *J. S.* not ignorant of the premiſſes, but contriving and fraudulently intending the ſaid *R. D.* in this

this behalf unjuſtly to damnify, and to deprive him of the whole benefit, profit and advantage of the ſaid cloſe called the kitchen-garden, afterwards, *to wit*, on the ſaid firſt day of *October* in the ſaid ſixth year of his preſent majeſty's reign, and from thence to the firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, the pales and fences ſeparating and dividing the ſaid cloſe called the kitchen-garden, and the ſaid cloſe called the hop-garden one from the other as aforeſaid, permitted to remain and continue ruinous, broken, and in decay for want of repairing the ſame; by means whereof the cattle, hogs and ſheep of the ſaid *J. S.* and of diverſe other perſons to the ſaid *R. D.* unknown, on the ſaid firſt day of *October*, and on ſeveral days and times between the ſaid firſt day of *October* and the ſaid firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, out of the ſaid cloſe of the ſaid *J. S.* called the hop-garden, into the ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, broke and entered, and the graſs, corn, barley, beans, peaſe, turnips, carrots and cabbages, there then lately growing and being, to the value of nine pounds and nineteen ſhillings, eat, trod down, and conſumed; by means whereof the ſaid *R. D.* the whole benefit, profit and advantage of his ſaid cloſe called the kitchen-garden, for all that time, *to wit*, from the ſaid firſt day of *October* in the ſaid ſixth year of his ſaid preſent majeſty's reign to the ſaid firſt day of *January* in the ſaid ſixth year of his ſaid preſent ma-

jeſty's reign, wholly loſt and was deprived of; whereupon the ſaid *R. D.* ſaith, that he is wronged, and hath damage to the value of nine pounds and nineteen ſhillings; And therefore he bringeth ſuit, *&c.*

Treſpaſs. Breaking plaintiff's cloſe, &c. Andrews's Rep. 21, 284.

Southampton, *T. W.* late of *Chriſt-Church* in the county of *Southampton*, gentleman, was attached to anſwer *J. P.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *J. P.* at *L.* in the county aforeſaid, and his graſs and herbs, to the value of 20 *l.* there lately growing, with certain cattle grazed, trampled on and conſumed, and did him other injuries, to the great damage of the ſaid *J. P.* and againſt the peace of our lord the preſent king; and whereupon the ſaid *J. P.* by *J. G.* his attorney complaineth, that the ſaid *T. W.* on the firſt day of *June* in the ſixth year of his preſent majeſty's reign, with force and arms, *&c.* broke the cloſe of the ſaid *J. P.* at *L.* in the county aforeſaid, and the graſs, corn, barley, beans, peaſe, turnips, carrots and cabbages, to the value of 10 *l.* there then lately growing, with certain cattle, that is to ſay, with horſes, oxen, cows, hogs and ſheep, grazed, trampled on and conſumed, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* and whereupon the ſaid *J. P.* ſaith that he is injured, and hath damage to the value of twenty pounds; And thereof he bringeth ſuit, *&c.*

In the Common Pleas.

Michaelmas *Term in the ſeventeenth year of king* George *the third.*

Middleſex, *to wit.* *J.* *M.* late, of, *&c.* was attached to anſwer *J. H.* of a plea, wherefore with force and arms he aſſaulted the ſaid *J. H.* at *Weſtminſter* in the county of *Middleſex*, and beat, wounded and ill-treated him, ſo that his life was deſpaired of, and other injuries did to him, to the great damage of the ſaid *J. H.* and againſt the peace of our lord the preſent king, *&c.* And whereupon the ſaid *J. H.* by *J. C.* his attorney, complaineth, that the ſaid *J. M.* on the day of in the year of his preſent majeſty's reign, with force of arms, that is to ſay, with ſwords, ſtaves and knives, aſſaulted the ſaid *J. H.* at *Weſtminſter* in the county of *Middleſex*, and beat, wounded, and treated him ill, ſo that his life was deſpaired of; and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* wherefore the ſaid *J. H.* ſaith, that he is injured, and hath damage to the value of 50*l.* And thereof he bringeth ſuit, *&c.* *Aſſault.*

Surrey, *to wit.* *J.* *T.* late of, *&c.* brewer, was attached to anſwer *W. B.* of a plea of treſpaſs on the caſe; and whereupon the ſaid *W. B.* by *L. R.* his attorney complaineth, that whereas the ſaid *W. B.* on the tenth day *Trover.*

day of *December* in the ſeventh year of his preſent majeſty's reign, at *Kingſton* in the county of *Surry*, was poſſeſſed of the following goods and chattels, that is to ſay [*here inſert the goods*] to the value of one hundred pounds, as of his own proper goods and chattels; and being ſo thereof poſſeſſed the ſaid *W. B.* caſually loſt the ſaid goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, *to wit*, on the ſaid tenth day of *December* in the ſeventh year aforeſaid, at *Kingſton* aforeſaid in the county aforeſaid, came by finding to the hands and poſſeſſion of the ſaid *J. T.* *Nevertheleſs* the ſaid *J. T.* knowing the ſaid goods and chattels to be the goods and chattels of the ſaid *W. B.* and to him of right to belong and appertain, yet contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W. B.* of the ſaid goods and chattels, hath not delivered the ſaid goods and chattels to the ſaid *W. B.* (altho' often required) but afterwards, that is to ſay, on the tenth day of *January* in the ſeventh year aforeſaid, at *Kingſton* aforeſaid in the county aforeſaid, converted the ſaid goods and chattels to his own proper uſe, to the damage of the ſaid *W. B.* of 200*l.* And thereof he bringeth ſuit, *&c.*

A count cannot be added to a declaration after the ſecond term of the delivery or filing thereof in the office. *Barnes* 500.

See further precedents among the pleadings at the end of the book, *&c.*

Money, &c. *brought into court.*

THE intent and conſequence of bringing money into court, will appear by the following rule.

In the Common Pleas.

Michaelmas *Term in the ſeventeenth year of king* George *the third.*

S. Againſt *R. Wedneſday* the 28th of *November.* It is ordered, That the defendant ſhall pay to the plaintiff, or to his attorney, ten pounds, together with coſts to be taxed by Mr. prothonotary *Cooke*, if the plaintiff will accept thereof, and that thereupon all further proceedings in this action ſhall be ſtayed; but if the plaintiff will not accept thereof, the defendant ſhall immediately bring the ſaid ten pounds into this court, and plead the general iſſue; and if upon the trial of the iſſue between the ſaid parties the plaintiff ſhall become nonſuit, or the jury ſhall not aſſeſs damages to the plaintiff exceeding the ſaid ten pounds, then the plaintiff ſhall have no coſts, but ſhall pay to the defendant, or to his attorney, coſts to be taxed by the ſaid prothonotary; which coſts ſhall

Rule for paying money into court.

ſhall be paid out of the money ſo brought into court, if ſufficient for that purpoſe, and the reſidue, if any, ſhall be paid to the plaintiff. But if the money ſo paid into court be not ſufficient to pay the ſaid coſts, the deficiency ſhall be made good by the plaintiff. But if upon the trial of the ſaid iſſue the jury ſhall aſſeſs damages to the plaintiff exceeding the ſaid ten pounds, then judgment ſhall be entered for the plaintiff upon the verdict with coſts, and the plaintiff ſhall have the ſaid ten pounds out of court towards ſatisfaction of ſuch judgment, and may take out execution for the reſidue.

Entered on the motion of ſerjeant *Agar* for the defendant. *By the court.*

Money not to be brought into court where the plaintiff is an executor or adminiſtrator.

Where the plaintiff is an executor or adminiſtrator, money may not be brought into court; See *Barnes* 280, 286. *Pract. R. C.* p. 250. but as the reaſon given is, that an executor or adminiſtrator is not by law to pay coſts. And *Barnes* 287, and *Pract. Reg. C. P.* 249. All ſeem *contra.* Therefore *quære*, Whether money may not be brought into court, if the action brought by the executor or adminiſtrator be ſuch an action as he might have brought in his own right, and in which he need not have named himſelf executor or adminiſtrator; for in ſuch an action he will be liable to pay coſts on a nonſuit, or the like.

[In

In debt for rent money may be brought into court. *Barnes* 280. *Pract. Reg. C. P.* 257. *May in debt for rent.*

In replevin and avowry for rent the plaintiff was allowed to bring money into court. *In replevin.*

In covenant, in which the breach was assigned in a sum certain, *viz.* 11 *l.* for not dressing corn, leave was given to bring in the 11 *l.* upon the common rule. *Hil.* 15 *Geo.* 2. *C. B. Walnouth* v. *Houghton*, *Barnes* 284. *In covenant, for a sum certain.*

In debt on a bond, conditioned for good behaviour and paying money, motion for leave to bring in the money and plead performance to the rest of the condition denied. *Hil.* 18 *Geo.* 2. *C. B. Atkins* v. *Taylor*, *Barnes* 285. *In debt on a bond denied.*

In debt for the penalty of a charter-party, motion to bring in the money denied. *Pas.* 19 *Geo.* 2. *C. B. Yeoman* v. *Ross.* *Id. ib.* *And in debt on a charter-party.*

In debt on a bond conditioned for the performance of covenants in a lease, and breach assigned for non-payment of 10 *l.* for half a year's rent, the like motion denied. *Hil.* 22. *Geo.* 2. *C. B. Wright* v. *Benington*, *Barnes* 286. *And in debt on a bond for performance of covenants, and breach in a sum certain.*

In trover, goods not being ponderous have been allowed to be brought into court; this is discretionary in the court, and where they have been ponderous, the plaintiff has been ordered to shew cause why he should not accept them. *Barnes* 281. *Pract. Reg. C. P.* 260. *Rep. and Cas. of Pract. C. P.* 130. *Trover.*

The court will not give the defendant liberty to bring money into court on some of *Defendant shall not bring*

the

money in to part, and demur to the reſt of the declaration.

the counts in the declaration, and demur to the reſt; for the reaſon of making the rule for bringing money into court, is to prevent vexation, and make an end of the cauſe. *Pract. Reg. C. P.* 256.

In an action for meſne profits after recovery in ejectment, defendant ſhall not pay money into court. 2 *Wilſ.* 115.

But leave to bring in money as to ſome counts, and plead ſeveral pleas to the reſt.

But the court gave leave to bring 5*l.* 5*s.* into court upon the common rule, with reſpect to the 7th and 8th counts, there being 9 counts in the declaration, and as to the reſt to plead the general iſſue, the ſtatute of limitations and a ſet-off. *Trin.* 21 & 22 *Geo.* 2. *C. B. Hellier* v. *Hallet*, adminiſtratrix. *Barnes* 286.——Leave to plead bankruptcy to the count, and to bring in money on the common rule, and plead the general iſſue to the other counts. *Paſ.* 16 *Geo.* 2. *C. B. Hall* v. *Lane*, *Barnes* 350.

To bring in money, and plead plene adminiſtravit, *and the general iſſue to the whole.*

Leave granted to bring money in on the common rule, and plead *plene adminiſtravit*, and the general iſſue to the whole. *Hil.* 23 *Geo.* 2. *C. B. Auſtin* v. *Roſs*, executor. *Barnes* 287.

When money may be brought into court.

It has been ſaid the defendant may be admitted to bring money into court after the rule to plead is out, but not after he has pleaded, without the plaintiff's conſent. *Barnes* 281. But *Hil.* 29 *Geo.* 2. between *Phillips* and *Barker*, leave was given to withdraw the general iſſue, to bring 42*s.* into court and plead the ſame again on taking notice of trial for ſitting after term, no delay having been occaſioned by the defendant's having omitted

omitted to bring the money in before plea pleaded. *Barnes* 289.

If a regular judgment be ſet aſide on payment of coſts, pleading an iſſuable plea, *&c.* the defendant ſhall not have leave to bring money into court. *Barnes* 281. *Pract. Reg. C.* 85, 262. *Nor after a regular judgment ſet aſide.*

The defendant had brought money into court on the common rule; the plaintiff would not accept the money, but proceeded to trial, and upon the trial was nonſuited; and the defendant moved in the treaſury, that in regard the plaintiff was out of court by the nonſuit, he might have the money back, and produced the *Poſtea*. The judges on conſideration were of opinion, that the defendant by bringing the money into court had admitted the plaintiff to be intitled to it at all events, and that therefore the defendant could not have the money back again: Afterwards the plaintiff brought a new action, and the court made a rule, that the plaintiff might have the money if he thought fit; but if not, that it ſhould remain in court on the common rule in the new action. *Lane* v. *Wilkinſon, Mich.* 1. *Geo.* 1. *Pract. Reg. C. P.* 250. *Rep. and Caſ. of Pract. C. P.* 36. *Tho' plaintiff nonſuited, defendant cannot have the money back.* *On a new action leave for plaintiff to have the money, or let it lie on the common rule.*

The like reſolution, and leave for the defendant to bring in more money on a new action being brought. *Dickenſon* v. *Talkwin, Trin.* 3 *Geo.* 2. *Pract. Reg. C. P.* 252. *But ſee the rule antea.* *The like, and leave to bring in more money on the new action.*

Where the plaintiff has refuſed the money and proceeded, the court has admitted him to take the money out of court on paying the defen- *Plaintiff admitted to take the money, tho'*

had refuſed it, and proceeded. defendant his coſts ſubſequent to the bringing the money into court. *Barnes* 280, 282.

If judgment arreſted, money to be paid to plaintiff. The judgment was arreſted, and conſequently no coſts payable on either ſide; the court ordered 20*l.* brought into court by the defendant to be paid to the plaintiff. *Paſ.* 16 *Geo.* 2. *C. B. Fiſher* v. *Kitchingman*, *Barnes* 284.

Plaintiff's attorney paid his bill out of money brought into court. On the common rule 37*l.* being paid into court, the plaintiff proceeded to trial and recovered a greater ſum, and afterwards became a bankrupt, the aſſignees moved to have the 37*l.* paid to them; but the plaintiff's attorney inſiſting, that as he had been the means of obtaining the verdict, he ought to be firſt paid his bill of coſts, it was ordered that his bill ſhould be taxed, and that what was due to him ſhould be paid out of the 37*l.* and the reſidue to the aſſignees. *Trin.* 27, 28 *Geo.* 2. *C. B. Owſton* v. *Obrian*, *Barnes* 145.

What ſum on a treaſury motion. 5*l.* or under may be brought in on a motion in the treaſury.

Rule abſolute for leave to withdraw plea of general iſſue, on payment of coſts, pay 2*l.* 2*s.* into court, on common rule, and plead the ſame plea again; the defendant taking notice of trial for the ſitting after term in *Middleſex*; the court obſerved, that no delay had been occaſioned to plaintiff, by defendant's omitting to bring money into court, before plea pleaded. *Barnes* 269.

As to laying of actions, and changing the Venue.

ALL real and mixed actions, as waſte, *Ejectione firmæ*, *&c.* are local, and muſt be laid in the county where the land lies; and actions of treſpaſs *Quare clauſum fregit* muſt be laid in the county where the wrong was done. *Local actions.*

Actions of debt, detinue, aſſault, annuity, account, *&c.* are tranſitory, and may be laid in any county where the plaintiff pleaſeth. *Tranſitory actions.*

But by a rule of this court, actions upon the caſe, treſpaſs for goods, aſſault or impriſonment, ariſing in any *Engliſh* county, are to be laid in their proper counties, unleſs they ariſe where the juſtices of *Niſi prius* ſeldom come. And becauſe treſpaſs or trover for goods, battery, impriſonment and ſlander muſt needs be notorious in what county they ariſe, the attorney knowingly laying them out of their proper county (unleſs in the caſes before expreſſed, or ſuch other cauſe as ſhall be allowed by a judge of the court) ſhall be ſeverely puniſhed. *Mich.* 1654. *Caſe, treſpaſs, aſſault or impriſonment, to be laid in their proper counties, unleſs, &c. Attornies laying actions of treſpaſs, &c. in foreign counties, unleſs, &c. to be ſeverely puniſhed.*

In a tranſitory action, *before the defendant has pleaded*, on motion and affidavit made, (That the plaintiff's cauſe of action (if any) aroſe in the county of *A.* and not in the county of *B.* as laid in the declaration, or elſewhere out of the county of *A.*) the court will change the *Venue* to the proper county; and the defendant muſt plead to the new action as *Venue may be changed before plea, on motion and affidavit. Defendant to plead as before.*

Venue *may be changed tho' the defendant comes in on the exigent.*

as he ſhould have done to the former without delay; and the *Venue* may be changed in this manner though the defendant comes in on the exigent. *Same rule.*

Venue *can't be changed before appearance.*

The defendant cannot move to change *Venue* in any action, until his appearance be entred. *Paſ.* 24 *Car.* 2.

May move to change the Venue *at any time before plea.*

Any defendant may move to change the *Venue* at any time before plea pleaded, in all ſuch actions where the *Venue* may be changed by the courſe of this court, notwithſtanding ſuch defendant may have applied for and obtained further time to plead before ſuch motion made. *Mich.* 16 *Geo.* 2.

Where a plea ſhall be no waiver of a rule Niſi *for changing the* Venue.

The defendants having put in their plea, after a rule for ſhewing cauſe why the *Venue* ſhould not be changed, and before it was made abſolute; the court held, that the putting in the plea by inadvertency was no waiver of the rule, and gave the defendants leave to withdraw their plea on payment of coſts, and made the rule for changing the *Venue* abſolute. *Trin.* 24 & 25 *Geo.* 2. *C. B. Herbert* v. *Flower et al.* in trover. *Barnes* 360.

Rules *Niſi* for changing the *Venue* from *London* into *Eſſex* were diſcharged; the defendant on obtaining a judge's order for time to plead having conſented to rejoin *gratis*, and to take notice for trial at the ſitting after term in *London*; for though an order for time to plead is generally no reaſon againſt changing the *Venue*, yet if the defendant's attorney will conſent to take notice of trial in the county where the action is laid, that conſent ſhall bind him; if the judge had known the

the defendant's intention of moving to change the *Venue*, he would have made his order without prejudice to ſuch motion. *Trin.* 28 *Geo.* 2. *Hunter* againſt *Gray*, and *Smith* againſt *Gray*, *Barnes* 493.

Action on the caſe on a cuſtom of the borough of *Leiceſter*, for exerciſing the trade of a watch-maker there, not being a freeman. The *Venue* was changed from *London* to *Leiceſterſhire*, without the uſual affidavits. *Note*; there is a commiſſion of goal-delivery every aſſiſes for this borough, but no commiſſion of *Niſi prius*. *Trin.* 19 & 20 *Geo.* 2. *C. B.* Mayor, &c. of *Leiceſter* v. *Green*, *Barnes* 492.

Venue changed on reading declaration without the uſual affidavit.

If it be moved the laſt day of the term, the court will not make a rule; for the plaintiff has no time to ſhew cauſe. *Pract. Reg. C. P.* 426, 427.

Not to be moved the laſt day of term.

But if the declaration be delivered ſo late, that the plaintiff cannot move before the laſt day of term, he may move it then. *Barnes* 489.

Unleſs, &c.

The *Venue* may not be changed from a county at large to a city and county, as from the county of *Middleſex* to the county of the city of *York*. *Barnes* 477.

The Venue *not to be changed from a county to a city.*

But the *Venue* has been changed from a county at large into *London*. *Id. ib.*

Except London.

It may be changed from one city and county to another city and county, as from the city of *Norwich* to the city of *London*. *Pract. Reg. C. P.* 429.

But may from one city and county to another.

The court will not change the *Venue* into a county palatine, as from *Middleſex* to *Lanca-*

Not to be changed into a

county palatine.

ſhire. Rep. and Caſ. of Pract. C. P. 91. *Barnes* 478, 488. *Pract. Reg. C. P.* 428, 429.

Of changing the Venue *into cities and counties where aſſizes are ſeldom held, or but once a year.*

The *Venue* cannot be changed into *Hull*, *Canterbury*, *&c.* becauſe it is not known when an aſſiſe will be held there; nor into the city of *Worceſter* or *Glouceſter*, out of the county at large, becauſe the aſſiſes for the city and the county at large are held at the ſame place. In *Eaſter* or *Trinity* term, the *Venue* may be changed into a city or county where the aſſiſes are held but once a year, as *Briſtol*, *Cumberland*, *&c.* In *Michaelmas* and *Hilary* term there is no certain rule, but the court ſhould change the *Venue* then, if it can be done without manifeſt inconvenience.

Nor in an action of Scandalum magnatum, *or on a bond or promiſſory note.*

The court will not change the *Venue* in an action of *Scandalum* (*a*) *magnatum*, nor where the plaintiff ſues on a bond, or other ſpecialty, nor on a bill (*b*) of exchange or promiſſory (*c*) note. See *Rep. and Caſ. of Pract. C. P.* 119. *Pract. Reg. C. P.* 317.

But where there is a declaration on a note with other counts, as for goods ſold and delivered, *&c.* the court will change the *Venue*, unleſs the plaintiff will undertake, at the peril of a nonſuit, to give evidence on the promiſſory note. See *Barnes* 491, 492.

(*a*) *Rep. and Caſ. of Pract. C. P.* 132. *Pract. Reg. C. P.* 417. *Barnes* 482. (*b*) 2 *Barnes* 491. (*c*) *Pract. Reg. C P.* 417, 418. *Barnes* 480, 483, 485. *Rep. and Caſ. Pract. C. P.* 152.

If

If a ſerjeant (*d*) at law, or an (*e*) attorney, be plaintiff, and ſues by *Capias*, and not by writ of privilege, the *Venue* may be changed, for he has thereby waived his privilege, and is to be conſidered only as a common perſon. *If a ſerjeant or attorney ſues by* Capias, *the* Venue *may be changed.*

Action retained in *Middleſex*, on motion to change the *Venue* into *Worceſterſhire*, in right of plaintiff's privilege as an attorney, though attachment was not *Teſt.* out of *Middleſex*. *Barnes* 493.

If an attorney be defendant, his privilege alone is not a ſufficient cauſe to change the *Venue*. *Rep. and Caſ. of Pract. C. P.* 135. *Pract. Reg. C. P.* 419. *Barnes* 482. *An attorney defendant not intitled to have the* Venue *changed.*

Venue changed from *Middleſex* to *Monmouthſhire*. *Barnes* 493.

Pleas.

IF the defendant anſwers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two ſorts, general and ſpecial. *Pleas.*

A general plea, commonly called the general iſſue, is a conciſe direct anſwer to the declaration. *General.*

A ſpecial plea contains ſome particular matter, either by way of excuſe, juſtification, or the like. *Special.*

(*d*) *Rep. and Caſ. of Pract. C. P.* 145. *Pract. Reg. C. P.* 420. *Barnes* 346. (*e*) *Rep. and Caſ. of Pract. C. P.* 132. *Pract. Reg. C. P.* 419. *Barnes* 479, 480.

General iſſues.

Non eſt factum *to a debt on a bond.*

And the ſaid *P.* by *L. R.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing, becauſe he ſaith, that that writing is not his deed; and of this he putteth himſelf upon the country.

Non eſt factum *to a bill or indenture.*

The ſame as before, only, inſtead of the word *writing*, ſay *bill.* The like of an indenture, *mutatis mutandis.*

Non eſt factum teſtatoris.

10 Co. 120.

And the ſaid *J. P.* by *T. B.* his attorney, cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing, becauſe he ſaith, that the ſaid writing is not the deed of the ſaid *W. P.* and of this he putteth himſelf upon the country.

Nil debet.

And the ſaid *R.* by *M. S.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he doth not owe to the ſaid *H.* the ſaid 100*l.* or any part thereof, in manner and form as the ſaid *H.* hath above declared againſt him; and of this he putteth himſelf upon the country.

Nil debet *in debt* qui tam. Lilly's Entries 223.

And the ſaid *H.* by *J. B.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he the ſaid *H.* doth not owe to our ſaid lord the king, and to the ſaid *J. B.* who as well, *&c.* the ſaid 400*l.* or any part thereof, in manner and form as the ſaid *J.* who as well, *&c.* hath above

above declared againſt him; and of this he putteth himſelf upon the country.

And the ſaid *C. D.* by *E. F.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that he doth not detain from the ſaid *A. B.* the ſaid thirty pounds nor any part thereof, in manner and form as the ſaid *A. B.* above complaineth againſt him; and of this he putteth himſelf upon the country. Non detinet *in debt.* Brownl. 170. Lilly's Entries 215.

And the ſaid *C.* by *K. P.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he did not undertake in manner and form as the ſaid *G.* above complaineth againſt him; and of this he putteth himſelf upon the country. Non aſſumpſit.

And the ſaid *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and injury, when, *&c.* and ſay, that the ſaid *J. W.* [*the teſtator*] in his life-time did not undertake in manner and form as the ſaid *R.* above complaineth againſt them; and of this they put themſelves upon the country. Non aſſumpſit *by executors.*

And the ſaid *T. W.* by *J. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he is not guilty of the premiſſes above laid to his charge, as the ſaid *H.* above complaineth againſt him; and of this he putteth himſelf upon the country. *Not guilty in caſe.*

And ſaith, that he is not guilty of the ſaid treſpaſs, as, *&c. (ut ſupra).* *In treſpaſs.*

And ſaith, that he is not guilty of the ſaid treſpaſs and aſſault, as, *&c.* *In aſſault.*

Replication to the general iſſue. The replication to each of theſe general iſſues is this; and the ſaid *D.* doth ſo likewiſe, *i. e.* likewiſe puts himſelf upon the country.

Special pleas.

Non aſſumpſit infra ſex annos. And the ſaid *W.* by *J. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *E.* ought not to have her ſaid action therefore againſt him, becauſe he ſaith, that he did not undertake at any time within ſix years next before the day of * ſuing forth the original writ of the ſaid *E.* in manner and form, as the ſaid *E.* above complaineth againſt him; and this he is ready to verify: Wherefore he prayeth judgment, whether the ſaid *E.* ought to have her ſaid action therefore againſt him, *&c.*

Replication. And the ſaid *E.* ſaith, that ſhe by any thing before alledged ought not to be barred from having her ſaid action againſt the ſaid *W.* becauſe ſhe ſaith, that the ſaid *W.* at ſome time within ſix years next before the day of ſuing forth the original writ of the ſaid *E.* undertook in manner and form, as the ſaid *E.* above complaineth againſt him; and this ſhe prayeth may be inquired of by the country; and the ſaid *W.* doth ſo likewiſe, *&c.*

Rejoinder.

---

* If at the ſuit of an attorney ſay, *ſuing forth the ſaid writ of privilege.*—If againſt an attorney ſay, *exhibiting the ſaid bill.*

And

And the ſaid *S.* by *K. M.* his attorney, cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *V.* ought not to have his ſaid action againſt him, becauſe he ſaith the ſaid ſeveral cauſes of action did not accrue, nor did any of them accrue to the ſaid *V.* within ſix years next before the day of the obtaining the original writ of him the ſaid *V.* and this he is ready to verify: Wherefore he prayeth judgment if the ſaid *V.* ought to have his ſaid action thereof againſt him the ſaid *S.* Actio non accrevit infra ſex annos.

And the ſaid *V.* ſaith, that he by any thing above alledged ought not to be barred from having his action aforeſaid againſt him the ſaid *S.* becauſe he ſaith, that the ſaid ſeveral cauſes of action did accrue to the ſaid *S.* within ſix years next before the day of obtaining the original writ of him the ſaid *S.* to wit, on the aforeſaid 12th day of *Auguſt* in the year of our Lord 1758, at the pariſh aforeſaid in the county aforeſaid; and this he prayeth may be inquired of by the country; and the aforeſaid *S.* doth ſo likewiſe, *&c.* *Replication.* *Rejoinder.*

And the ſaid *T.* by *J. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and as to the coming with force and arms, and whatever is againſt the peace of our now lord the king, the ſaid *T.* ſaith, that he is not guilty thereof; and of this he putteth himſelf upon the country; and the ſaid *R.* doth ſo likewiſe, *&c.* And as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *T.* ſaith, that the ſaid *R.* ought not to have or maintain his ſaid action thereof *Son aſſault demeſne.*

thereof againſt him, becauſe he ſaith, that the ſaid *R.* at the time in which the ſaid treſpaſs is above ſuppoſed to be done at *L.* in the county aforeſaid, with force and arms, *&c.* aſſaulted the ſaid *T.* and then and there would have beaten, wounded, and evilly treated the ſaid *T.* if he the ſaid *T.* had not then and there immediately defended himſelf againſt the ſaid *R.* by which the ſaid *T.* then and there defended himſelf againſt the ſaid *R.* and ſo the ſaid *T.* ſaith, if any damage or hurt then and there happened to the ſaid *R.* it was from the aſſault of the ſaid *R.* and in defence of the ſaid *T.* and this the ſaid *T.* is ready to verify: Wherefore he prayeth judgment, if the ſaid *R.* ought to have or maintain his ſaid action againſt him, *&c.*

Replication de injuria ſua propria.

And the ſaid *R.* ſaith, that he by any thing by the ſaid *T.* above by pleading alledged ought not to be precluded from having his ſaid action againſt the ſaid *T.* for the reſidue of the treſpaſs, becauſe he ſaith, that the ſaid *T.* on the day and year above mentioned, at *L.* aforeſaid in the county aforeſaid, of his proper injury, without the cauſe by the ſaid *T.* above by pleading alledged, aſſaulted the ſaid *R.* and beat, wounded and evilly treated him in manner and form as the ſaid *R.* above complaineth thereof againſt the ſaid *T.* And this he prayeth may be inquired of by the country; and the ſaid *T.* doth ſo likewiſe, *&c.* Therefore as well to try the ſaid iſſue, as the ſaid other iſſue above joined between the ſaid parties, the ſheriff is commanded, *&c.*

Rejoinder.

Venire awarded.

And

And the ſaid *R. J. G.* and *A.* by *T. F.* their attorney come and defend the force and injury, when, *&c.* and as to the coming with force and arms, and alſo the whole treſpaſs aforeſaid, except the aſſault and impriſonment aforeſaid, they ſay they are Not guilty thereof; and of this they put themſelves upon the country; and the ſaid *N.* doth ſo likewiſe; and as to the reſt of the treſpaſs aforeſaid above ſuppoſed to be done, they the ſaid *R. J. G.* and *A.* ſay, That the ſaid *N.* ought not to have his ſaid action thereupon againſt them, becauſe they ſay that before the ſaid time in which that aſſault and impriſonment is ſuppoſed to be done, to wit, in the term of St. *Hilary* in the —— year, *&c.* one *A. B.* duly ſued out of the court of our lord the king, before the king himſelf, (the ſaid court then being at *Weſtminſter* in the county of *Middleſex*) a certain writ of our ſaid lord the king of *Latitat* againſt the ſaid *N.* by the name of *F. N.* gent. and againſt *V. E. J. C.* and *J. C.* in the ſaid writ alſo named, directed to the then ſheriff of the county of *Devon*; by which ſaid writ the ſaid ſheriff of the ſaid county of *Devon* was commanded to take the ſaid *N. F. V. E. J. C.* and *J. C.* if they ſhould be found in his bailiwick, and to keep them ſafely, ſo that he might have their bodies before our ſaid lord the king at *Weſtminſter*, on *Monday* next after the morrow of the *Aſcenſion* of our Lord then next enſuing, to anſwer the ſaid *A. B.* in a plea of treſpaſs, and alſo to a bill of the ſaid *A.* againſt the ſaid *N.* for 60 *l.* of debt, according

Juſtification in aſſault and impriſonment.

Writ ſued out of B. R. *againſt the plaintiff.*

Directed to the ſheriff of Devon.

according to the cuſtom of the court of our ſaid lord the king, before the king himſelf to be exhibited; which ſaid writ afterwards, and before the return thereof, to wit, on the ninth day of *May* in the —— year, *&c.* the ſaid *A. B.* at *S.* aforeſaid delivered to one Sir *E. S.* bart. then ſheriff of the ſaid county of *D.* to be executed in due form of law. By virtue of which ſaid writ, the ſaid Sir *E. S.* then ſheriff of the county aforeſaid afterwards, to wit, on the——day of——in the——year aforeſaid, and before the return of the ſaid writ, at *S.* aforeſaid made his certain warrant in writing, ſealed with the ſeal of his office, directed to the ſaid *R. J. G.* and *B.* and to one *R. E.* by which ſaid warrant the ſaid then ſheriff, on the behalf of our lord the king, commanded the ſaid *R. J. G. B.* and *R.* and each of them, that they ſhould take the ſaid *N. F.* if he ſhould be found in his bailiwick, and that, *&c.* ſo that the ſaid ſheriff might have his body before our ſaid lord the king at *Weſtminſter*, on the ſaid *Monday* next after the morrow of the *Aſcenſion* of our Lord, to anſwer the ſaid *A. B.* of the plea and bill aforeſaid, which ſaid warrant afterwards, to wit, on the ſaid——day of——in the——year aforeſaid, at *S.* aforeſaid, was delivered to the ſaid *R. J. G.* and *B.* to be executed according to law; by virtue of which ſaid warrant they the ſaid *R. J. G.* and *B.* afterwards, and before the return of the ſaid writ, to wit, on the——day of——in the——year aforeſaid, at *S.* aforeſaid, took and arreſted the ſaid *N. F.* and then and there had him in

Writ delivered to the ſheriff.

Warrant thereupon to defendants.

By virtue whereof they arreſted the plaintiff.

their cuſtody by virtue of the ſaid warrant, and detained the ſaid *N.* as it was lawful for them to do, by the time in the ſaid declaration above ſpecified, which ſaid taking and arreſting the ſaid *N.* in form aforeſaid, and for the cauſe aforeſaid, are the ſame aſſault and impriſonment, whereof the ſaid *N.* above complaineth; without this, that they the ſaid *R. J. G.* and *B.* or either of them, are guilty of any aſſault and impriſonment, otherwiſe, or in any other manner before or after the ſaid —— day of —— in the —— year aforeſaid; and this they are ready to verify: Wherefore they pray judgment if the ſaid *N.* ought to have his action thereupon againſt them, *&c.*

Traverſe.

Sed vide *as to this plea*, 3 Lev. 62, 63.

And the ſaid *T.* by *R. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that at the time of making the ſaid ſeveral promiſes and undertakings he was within the age of twenty-one years; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *W.* ought to have his ſaid action thereupon againſt him, *&c.*

Infra ætatem.

And the ſaid *W.* ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action againſt the ſaid *T.* becauſe he ſaith, that the ſaid 20*l.* expended and laid out by him the ſaid *W.* for the ſaid *T.* and the taylor's work done and performed by him the ſaid *W.* together with the materials and neceſſary things uſed in and about the ſaid work, and in form aforeſaid found and

Replication, for neceſſary apparel ſuitable to defendant's degree.

and provided by the ſaid *W.* for the ſaid *T.* were laid out and expended, done and performed, found and provided by the ſaid *W.* at *London* aforeſaid, in the pariſh and ward aforeſaid, for the neceſſary apparel and cloathing of the body of the ſaid *T.* his degree requiring the ſame; and this he is ready to verify: Whereupon he prayeth judgment, and his ſaid damages by occaſion of the premiſſes, to be adjudged to him, *&c.*

Rejoinder, not for neceſſary apparel, &c.

And the ſaid *T.* ſaith, that the ſaid 20*l.* expended and laid out by the ſaid *W.* and the ſaid taylor's work done and performed by the ſaid *W.* together with the materials and things neceſſary, uſed in and about the ſaid work, and in form aforeſaid found and provided by the ſaid *W.* for the ſaid *T.* were not for the neceſſary apparel and cloathing of the body of the ſaid *T.* in manner and form as the ſaid *W.* has thereupon above by replying alledged; and of this he putteth himſelf upon the country; and the ſaid *W.* doth ſo likewiſe, *&c.*

Dureſs to a bond.

And the ſaid *H. J.* by *S. A.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *S. C.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that he, at the time of making the writing aforeſaid, was impriſoned by the ſaid *S. C.* and others by his contrivance, *to wit*, at *T.* aforeſaid in the county aforeſaid, and was there detained in priſon until he the ſaid *H. J.* by force and dureſs of impriſonment then and there made the ſaid

ſaid writing to the ſaid *S. C.* wherefore he prayeth judgment if the ſaid *S. C.* ought to have or maintain his ſaid action aforeſaid, *&c.*

Mich. 10 *Geo.* 2.

1 Count. *Indeb. aſſ.* for ſerving defendant as a hired ſervant.

2 *Indeb. aſſ.* for work and labour.

3 *Quantum meruit*, for nurſing defendant's daughter.

4 *Inſimul computaſſet.*

And the ſaid *John Carter* by *J. S.* his attorney cometh and defendeth the force and injury, when, *&c.* And as to the firſt promiſe and aſſumption in the ſaid declaration mentioned, except as to 3*s.* 6*d.* part of the ſaid ſum of 10*l.* therein mentioned; and as to all the other promiſes and aſſumptions mentioned in the ſaid declaration, the ſaid *John* ſaith, that he did not aſſume upon himſelf in manner and form as the ſaid *Margaret* above thereof complaineth againſt him; and of this he putteth himſelf upon the country; and as to the ſaid 3*s.* 6*d*, part of the ſaid ſum of 10*l.* in the ſaid firſt promiſe and aſſumption in the ſaid declaration mentioned; and as to the ſaid firſt promiſe and aſſumption in that behalf, the ſaid *John* ſaith, that the ſaid *Margaret* ought not to have or recover againſt him any more damages by reaſon of the not paying thereof, than the ſaid 3*s.* 6*d.* becauſe he ſaith, that after the ſaid firſt promiſe and aſſumption above ſuppoſed to be made, and before the ſuing out the original writ of the ſaid *Margaret*, to wit, on the

Plea of tender of 3*s* 6d.

Lilly's Ent. 476.
Pract. Reg. 562, 565.
1 Lutw. 368.

the firſt day of *January* in the year of our Lord 1753, at *Weſtminſter* aforeſaid, he the ſaid *John* was ready and offered to pay, and tendered to the ſaid *Margaret* the ſaid 3*s.* 6*d.* which the ſaid *Margaret* then and there refuſed to accept from the ſaid *John*. And the ſaid *John* further ſaith, that from the time of making the ſaid firſt promiſe and aſſumption hitherto he hath been always ready, and ſtill is ready, to pay the ſaid 3*s.* 6*d.* to the ſaid *Margaret*, and he bringeth the ſame here into court, ready to be paid to the ſaid *Margaret* if ſhe is willing to receive the ſame; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *Margaret* ought to have or recover againſt him any more damages than the ſaid 3*s.* 6*d.* &c.

W. Chapple.

The money to be paid into court to the prothonotary when the plea is left, which ſhould be pleaded in four days.

Replication. And as to the ſaid plea of the ſaid *John* as to the firſt promiſe (except as to 3*s.* 6*d.* part of the ſaid ſum of 10*l.*) and as to all the other promiſes mentioned in the ſaid declaration, the ſaid *Margaret* ſaith, that the ſaid *John* did promiſe and undertake in ſuch manner and form as the ſaid *Margaret* hath above complained againſt him the ſaid *John*; and of this ſhe likewiſe putteth herſelf upon the country; and as to the ſaid 3*s.* 6*d.* part of the ſaid 10*l.* in the ſaid firſt promiſe mentioned, and in bar pleaded to be tendered as

abov,e

above, ſhe the ſaid *Margaret* ſaith, that by reaſon of any thing by the ſaid *John* above in pleading alledged, ſhe ought not to be precluded from having her ſaid damages therefore againſt him the ſaid *John*, becauſe ſhe ſaith that he the ſaid *John* did not at any time before the ſuing out of the ſaid original writ of the ſaid *Margaret*, offer to pay or tender unto the ſaid *Margaret* the ſaid ſum of 3*s* 6*d*. as the ſaid *John* hath above in his pleading alledged; and this ſhe prayeth may be inquired of by the country, *&c.* And the ſaid *John* doth ſo likewiſe, *&c.* Therefore, *&c.*

Plea of miſnomer.

And *Thomas Merriton*, who is impleaded by the name of *Thomas Moreton*, in his proper perſon cometh and defendeth the force and injury, *&c.* and ſaith, that he is now, and always was called and known by the ſurname of *Merriton*, and not *Moreton*, as by the ſaid writ and declaration is above ſuppoſed; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.*

Abatement. Defendant a yeoman, and not a cheeſemonger.

And *John Smith*, late of the pariſh of St. *James* within the liberty of *Weſtminſter* in the county aforeſaid, yeoman, againſt whom the ſaid *Ralph Bigland* hath brought his ſaid writ, by the name of *John Smith* late of the pariſh of St. *James* within the liberty of *Weſtminſter* in the county aforeſaid, cheeſemonger, in his proper perſon cometh and defendeth the force and injury, *&c.* and ſaith, that on the day of ſuing out the ſaid original writ, and long before, he was, and yet is a yeoman, *and not of any myſtery, trade or profeſſion*;

Defendant ought regularly to ſhew his myſtery, not his degree, but being of no

trade these words are intended to answer that objection.

without this, that the ſaid *John Smith* on the day of ſuing the ſaid original writ, or at any time before or ſince, was a cheeſemonger; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed. [See more pleas in abatement, *Vol.* 2. *fo.* 1. to 17.]

Plea to be delivered in writing to the plaintiff's attorney.

The defendant is to deliver his plea in writing [on paper ſtamped with a treble penny ſtamp] to the plaintiff's attorney. *Mich.* 1654.

When to be left in the office.

And if there be no ſuch attorney to be found, or being found refuſeth to accept it, then the plea may be left in the office. *Same rule.*

Rule to plead, and an order for time. Plaintiff need not give a new rule.

Where a rule to plead has been given, and the defendant obtains an order for time to plead till the firſt day of the next term, the plaintiff may ſign judgment in default of the defendant's pleading, without giving a new rule. *Rep. and Caſ. of Pract. C. P.* 67, 141.

The like where delayed by an injunction.

Where the plaintiff has given a rule to plead, and has been delayed from ſigning judgment by an injunction out of *Chancery*, after the injunction is diſſolved he may ſign judgment without giving a new rule. *Barnes* 238.

Plea can't be delivered in the country.

A plea delivered to the attorney in the country is irregular, it muſt be delivered to the agent in town or left in the office. *Sed vide antea.*

Nil debet *to aſſumpſit, Plt. may ſign judgment.*

If the defendant pleads a falſe plea, as *Nil debet* to an action on the caſe upon *aſſumpſit*, the plaintiff may ſign judgment.

A

A plea of tender ought regularly to be pleaded in the ſame manner as a plea in abatement, *viz.* in four days after the declaration delivered, if delivered four days before the end of the term; and if the declaration be delivered before the eſſoin-day of a term, then it muſt be delivered within the four days of that term, as a plea of the laſt term. See *Barnes* 361. But this is to be diſpenſed with upon particular circumſtances, as if the defendant lives at a diſtance in the country, ſo that his attorney cannot deliver this plea in due time, the court will upon ſuch reaſonable cauſe give further time to plead a tender, as of the term in which the declaration was delivered, but ſuch application ſhould be within the four days, or at leaſt as ſoon as poſſible it can be without any delay on the defendant's part. See *Barnes* 351, 352. *Tender when to be pleaded.*

No dilatory plea ſhall be received unleſs the party offering the ſame do by affidavit prove the truth thereof, or ſhew ſome probable matter to the court to induce them to believe that the fact of ſuch dilatory plea is true. *Stat.* 4 & 5 *Annæ.* *No dilatory plea to be received without affidavit.*

There muſt be an affidavit to verify the fact, in a plea of *antient demeſne.* 3 *Wilſ. Rep.* 51.

A plea of *Infra ætatem* ought to have an affidavit annexed, to verify the truth of the plea. *Pract. Reg. C. P.* 5. *Affidavit to plea of infancy.*

A plea in abatement muſt be pleaded within the firſt four days after the declaration is delivered or left in the office, although no *Plea in abatement to be pleaded in four days.*

rule to plead be given, or elſe the defendant muſt within that time procure a ſpecial imparlance; and a plea in abatement otherwiſe pleaded is a mere nullity, and the plaintiff may ſign judgment. *Rep. and Caſ. of Pract. C. P.* 64. *Pract. Reg. C. P.* 286. *Barnes* 331, 334.

For want of affidavit to plea in abatement plaintiff may ſign judgment.

If a plea which ought to be verified by affidavit, has not an affidavit annexed, the plaintiff may *inſtanter*, without applying to the court for leave, ſign judgment as though no plea had been delivered. *Pract. Reg. C. P.* 4, 282. *Rep. and Caſ. of Pract. C. P.* 38.

And if a plea which ought to have a ſerj. hand, be delivered without.

If a plea, which ought to be ſigned by a ſerjeant, be delivered without a ſerjeant's hand, the plaintiff may ſign judgment as if no plea had been delivered. *Id. ib.*

What pleas do not require a ſerj. hand.

The following pleas do not require a ſerjeant's hand, *viz.*

Comperuit ad diem,	*Per minas,*
Son aſſault demeſne,	*Solvit ad diem,*
Plene adminiſtravit,	*Ne unques executor,*
Riens per diſcent,	*Infra ætatem.*
Nul tiel record,	

Rep. and Caſ. of Pract. C. P. 41. *Pract. Reg. C. P.* 282. *Barnes* 365.

Nor do

Ne unques adminiſtrator,	*Non Aſſumpit,*
Non eſt factum,	Not guilty. *Barnes*
Nil debet.	365. *Per Dures.*

Wherever the plea is ſigned by a ſerjeant, the replication muſt likewiſe be ſigned. *Barnes* 365.

The

The demand of a plea muſt be in writing, and the demand of a plea indorſed on the back of the declaration is inſufficient, except where a priſoner is defendant. See Tit. *Priſoner poſtea.* *Demand of a plea to be in writing.*

The plaintiff cannot ſign judgment for want of a plea, 'till the afternoon of the day after the rule to plead is out. *When to ſign judgment.*

Where the defendant obtains a judge's order for time to plead, the plaintiff cannot ſign judgment 'till the afternoon of the day after the time given by the order is expired; as if by the order the defendant has till *Monday* to plead, the plaintiff can't ſign judgment before *Tueſday* in the afternoon. *Pract. Reg. C. P.* 287. *Rep. and Caſ. of Pract. C. P.* 67. *When on a judge's order for time to plead.*

A ſummons for time to plead ought not to be taken out after the rule to plead is out; and if ſuch ſummons be taken out and ſerved, 'tis no ſtay of proceedings. *Rep. and Caſ. of Pract. C. P.* 137. *Barnes* 254. *No ſummons to be taken out after rule to plead is out.*

If the defendant takes out a judge's ſummons for time to plead, the plaintiff cannot ſign judgment 'till the ſummons is diſcharged. *Rep. and Caſ. of Pract. C. P.* 144. *Barnes* 240, 255. *After ſummons no judgment till ſummons diſcharged.*

A plea of tender is not an iſſuable plea within the meaning of a judge's order for time to plead, on pleading an iſſuable plea. *Rep. and Caſ. of Pract. C. P.* 134. *Plea of tender.*

Nor that plaintiff was an infant, and ought to ſue by *prochein amy*, and not by attorney; for this is a plea in abatement, and conſequently null and void. *Barnes* 263.

Nor a recovery in another court, for although this be an iſſuable plea within the letter of the judge's order, yet it is not within the true intent and meaning of it. *Wilſ. Rep. C. B.* 117. 3 *Wilſ. Rep.* 33 *S. P.*

Nor a general performance of covenants, not ſigned by council. *Barnes* 354.

Defendant obtained an order for time to plead, pleading an iſſuable (*a*) plea, rejoining (*b*) *gratis*, and taking ſhort (*c*) notice of trial within term; defendant pleaded accordingly, and plaintiff replied; and then defendant, inſtead of rejoining, demurred, merely for delay; plaintiff not having time to ſet down demurrer to be argued within term, ſigned judgment; which defendant moved to ſet aſide, but upon hearing council on both ſides, court conſidered defendant's practice a mere trick, and therefore denied the motion. *Barnes* 271.

Stat. of limitations.

If judgment be ſet aſide on payment of coſts, and pleading an iſſuable plea, the defendant cannot plead the ſtatute of limitations; for it is not an iſſuable plea within the meaning of the rule, for ſetting aſide the judgment, the rule ſhould be on pleading the general iſſue.

(*a*) Viz. a plea in chief, upon which plaintiff may take iſſue. *Barnes* 263.

(*b*) By which is meant rejoining without the common four-day rule. *Barnes* 271.

(*c*) On order for *ſhort* notice, two days is the leaſt. *Barnes* 301.

Defendant

Defendant cannot plead, "That no ſuch letters of adminiſtration, as ſet forth in declaration, were ever granted to plaintiff," without craving oyer thereof, and ſetting them out in his plea. 2 *Wilſ.* 413.

What time the defendant has to plead after oyer.

If the defendant crave oyer, he ſhall have as many days to plead after oyer given, as he had to plead at the time oyer was demanded. *Pract. Reg. C. P.* 26, 28, 300. *Rep. and Caſ. of Pract. C. P.* 81. *Barnes* 238, 254.

If oyer be demanded after rule to plead is out, the plaintiff may ſign judgment notwithſtanding; but if the defendant has eight days to plead, he may demand oyer at any time within the eight days, notwithſtanding the four-day rule to plead is expired. *Barnes* 268. See 2 *Wilſ.* 413.

On oyer defendant intitled to witneſſes names and all indorſements.

If the defendant prays oyer and a copy of a bond, he is intitled to inſpect it and have a copy of the whole, with the witneſſes names, and all memorandums ſubſcribed and indorſed. *Barnes* 327.

If defendant makes the oyer no part of his plea, plaintiff may make it part of the iſſue.

If the defendant prays oyer, and afterwards delivers a plea without making the oyer part of it, the plaintiff may make up the iſſue with oyer; for the pleadings are ſuppoſed to be *Ore tenus* at the bar, and a record is to be made of what is done there. *Barnes* 327.

Within what time the defendant ought to deliver oyer of a deed pleaded by him.

The defendant pleaded a releaſe, with a *Profert hic in curia*; on the 12th of *November* the plaintiff craved oyer, and on the 14th ſigned judgment, for want of oyer being given him; and it was held that this judgment was regularly ſigned, that from the 12th to

the 14th was a reaſonable time for the defendant to give the plaintiff oyer, and that the plaintiff had no need to apply to the court to ſet aſide the plea; for, after oyer craved by the plaintiff, the defendant is bound to verify his plea. *Blaxland* againſt *Burgis*, *Mich.* 7 *Geo.* 2. *Pract. Reg. C. P.* 301. *Barnes* 245. *Rep. and Caſ. of Pract. C. P.* 95.

Def. may waive his ſpecial plea, and plead the general iſſue.

The defendant may waive his ſpecial (*d*) plea, and plead the general iſſue the ſame term, without payment of coſts or application to the court. 2 *Wilſ.* 391. but not *vice verſa*, unleſs under ſpecial circumſtances. See 2 *Wilſ.* 253, 254.

Sed. Q. If the plaintiff has replied, whether the defendant muſt not apply to the court and pay coſts? See *Barnes* 127.

Can't withdraw a plea of tender.

After a plea of tender, and money brought into court, the court will not admit the defendant to withdraw his plea, and plead the general iſſue. *Barnes* 349.

Plea refuſed to be amended, though the application was before argument; defendant having likewiſe pleaded another plea in which iſſue was joined, trial had, and verdict for plaintiff. *Barnes* 25.

Plea of *plene adminiſtravit*, amended on payment of coſts. *Barnes* 25.

(*d*) Not, if it be a ſham plea. 2 *Wilſ.* 369.

Of double pleas.

DOUBLE pleas allowed, *viz.*—*Non aſſumpſit*, and *Non aſſumpſit infra ſex annos*. *Barnes* 329. denied *Pract. Reg. C. P.* 307, 308, 309. *Double pleas allowed.*

Non aſſumpſit, and a diſcharge under the inſolvent debtors act. *Pract. Reg. C. P.* 312. *Barnes* 343.

In replevin, leave given to avow two matters, *viz.* a juſtification of the diſtreſs under a leaſe for years, and that the goods diſtrained were not the property of the plaintiff. *Barnes* 338. *Pract. Reg. C. P.* 184.

In treſpaſs *Non cul.* and *Liberum tenementum alterius*. *Barnes* 336, 340. *Pract. Reg. C. P.* 315. *Barnes* 351, 356. *Vide infra.*

Solvit ad diem, and a mutual debt. *Barnes* 340.

Tender to part, and *Non aſſumpſit* to all the reſt. 3 *Wilſ.* 145.

Damage feaſant, and under a demiſe from the defendant to the plaintiff. *Barnes* 339. *Pract. Reg. C. P.* 315.

Damage feaſant and for rent in arrear. *Pract. Reg. C. P.* 316. *Barnes* 340.

Non aſſumpſit, a ſet-off, and a tender, as of laſt term. *Barnes* 353, 357, 360, 366.

Non cepit. Cattle property of another perſon, not of plaintiff; and *liberum tenementum*. *Barnes* 364.

A tender to the firſt count, and *Non aſſumpſit* to the reſidue. *Barnes* 362.

Non

Non aſſumpſit, and *Plene adminiſtravit*. Barnes 348. Pract. Reg. C. P. 311, 312.

Plene adminiſtravit, and a ſet-off. *Pract. Reg. C. P.* 313. *Barnes* 347.

Ne unques executor, and *Plene adminiſtravit*. Barnes 355, 365.

Non eſt factum, and *Ne unques executor*. Barnes 352.

Non eſt factum, and dureſs. *Barnes* 359.

Not guilty and a general releaſe. *Barnes* 347, 348.

Not guilty, and 4 guineas paid in ſatisfaction of all treſpaſſes to ſuch a time. *Barnes* 349.

Not guilty, *Son aſſault*, and ſatisfaction for all treſpaſſes. *Barnes* 352.

Not guilty, *Son aſſault*, and *Molliter manus impoſuit*. Pract. Reg. C. P. 315. *Barnes* 351, 352, 355.

Not guilty, and a juſtification in treſpaſs. *Barnes* 355, 356, 365.

Non cepit, and to avow the taking. *Barnes* 365.

Not guilty, and a tender of amends. *Barnes* 366.

Double plea denied.

Double pleas denied, *viz.*—*Non aſſumpſit*, and a releaſe, as contradictory. *Barnes* 328. *Pract. Reg. C. P.* 311.

Non aſſumpſit, *Non aſſumpſit infra ſex annos*, and leave to bring money into court.

Non aſſumpſit, and infancy; becauſe it may be given in evidence. *Barnes* 363.

Solvit ad diem, and *Riens per diſcent*, the like. *Barnes* 332.

Non eſt factum, and *Solvit ad diem.* Barnes 363.

Liberum tenementum, and a juſtification, the like. *Barnes* 329.

Nil debet, and *Nil habuit in tenementis*, the latter may be given in evidence. *Barnes* 333. *Pract. Reg. C. P.* 314.

Not guilty, and *Liberum tenementum*, denied as (*e*) contradictory, and no affidavit being produced to verify that the defendant's caſe required both pleas for his defence. *Barnes* 350.

In trover Not guilty, and that plaintiff became a bankrupt and his effects aſſigned. *Barnes* 360.

Non aſſumpſit, and a tender. *Barnes* 366. 3 *Wilſ.* 145.

Not guilty, and a licence, *Barnes* 349, 364. without an affidavit, denied: where the pleas are contradictory, the defendant ſhould make it appear by affidavit, that it is neceſſary for his defence to inſiſt upon both. If the treſpaſs be by cattle, the nature of the caſe is ſufficient; an affidavit is not neceſſary, becauſe the fact may not be in the party's knowledge; if by the party himſelf, he muſt move upon affidavit. *Barnes* 351.

Not guilty, and a releaſe of a particular treſpaſs, is never admitted, but a Not guilty and a general releaſe has been admitted where

---

(*e*) Court, upon motion to plead *double*, never gives leave to plead *contradictory* matters. *Barnes* 290.

an

an affidavit has been produced. *Barnes* 351.

Leave to plead double any time before judgment.

The defendant may have leave to plead double any time before judgment ſigned, though the rule to plead be out, but not before appearance. *Barnes* 329, 331.

Not after ſingle plea.

After the defendant has pleaded a ſingle plea, he can't have leave to add another. *Barnes* 361.

Nor after money brought into court.

After the defendant has paid money into court, he can't have leave to plead double. *Barnes* 339. *Pract. Reg. C. P.* 317.

Defendant cannot plead ſeveral matters in a *Quitam* action. *Barnes* 365.

On double plea, if plt. hath judgment in one, he can't enter a Noli profequi *as to the other.*

The defendant, with leave of the court, pleaded *Non aſſumpſit*, and *Non aſſumpſit infra ſex annos*; to the latter the plaintiff replied an original: Iſſue was joined on *Nul tiel record*, and judgment for the plaintiff; whereupon he executed a writ of inquiry, but did not proceed on the iſſue of *Non aſſumpſit*. The defendant moved to ſet aſide the writ of inquiry; the plaintiff inſiſted he might enter *Noli proſequi* on the iſſue of *Non aſſumpſit*, and take his execution on the iſſue that was found for him. The defendant inſiſted both pleas went to the whole declaration; and if any one iſſue was found for the defendant, the plaintiff was barred of his demand. *Cur'*: It is a judgment only as to part, and not upon the whole proceeding, and the inquiry could not be executed before the other iſſue was tried. The defendant has a double defence given him, and if any one be found for him, he ſhall be excuſed, therefore this writ of inquiry

quiry is wrong; and if this way of proceeding was to be allowed, there is an end of pleading double. *Prior* v. *Com. Ilay* Exec. *Hil.* 7 *G.* 2. *Pract. Reg. C. P.* 320.

Action on a promiſſory note, double plea, *viz. Non aſſumpſit*, and *Non aſſumpſit infra ſex annos:* To the latter the plaintiff replied an original, and on *Nul tiel record* had judgment; but on trial upon the *Non aſſumpſit* was nonſuited. On the iſſue in which he had judgment he executed a writ of inquiry, which the defendant moved to have ſet aſide, and ſaid, that the two pleas go to the whole; and if either be found for the defendant, the plaintiff cannot recover. It was urged for the plaintiff, that by the ſtatute for the amendment of the law, where ſeveral matters are pleaded by the defendant, if any be found for the plaintiff, he ſhall recover. *Cur':* This is a conſideration. Adjourned. *Poſtea* writ of inquiry ſet aſide. *Prior* v. *Com. Ilay* Exec. *Mich.* 8 *Geo.* 2. *Id. ib.*

If either found for the def. the plaintiff can't recover.

When iſſue is joined, the plaintiff delivers the defendant's attorney a copy thereof on treble penny ſtamped paper, he paying for the ſame after the rate of 4 *d.* a ſheet, beſides the duty; and for the entry of his plea, according to the length, if the general iſſue, only 2 *s.* and for filing his warrant of attorney 8 *d.* v. *poſtea fol.* But note, if the iſſue be of the ſame term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings ſubſequent to the declaration, for

Def. to pay for a copy of the iſſue, and entring his pleadings.

for he is not obliged to pay for two copies of the declaration in the ſame term.

Where plt. appears for the def. he may charge it on the back of the iſſue.

If the plaintiff enter the appearance for the defendant, he may charge for it on the back of the iſſue, and if the defendant's attorney will not pay it, he may ſign judgment.

Deft's attorney, if copy of iſſue overcharged, may tender what really due.

The practice was formerly, that the defendant's attorney muſt pay for the copy of the iſſue at all events, or the plaintiff might ſign judgment; and if it be overcharged, the defendant might apply to the court. But now it is held, that if the defendant's attorney is ready to pay, and tenders what is really due, it is ſufficient.

How if def. be a priſoner, and no attorney concerned.

Where the defendant is a priſoner, and no attorney appears to be concerned for him, the plaintiff cannot ſign judgment for not paying for the copy of the iſſue.

Method of making up the iſſue.

The method of making up the iſſue in this court is the ſame with the method uſed in the court of *King's Bench*, when the proceedings are by original; and when the proceedings in this court are by bill, the iſſue begins with a memorandum, as in the *King's Bench* on proceedings by bill. An iſſue by original begins thus:

In the Common Pleas.

Trinity *term (the term the iſſue is joined) in the year of king* George *the third.*

Middleſex, *to wit.* *A. B.* late of *Weſtminſter* in the county of *Middleſex*, gentleman, was attached to anſwer *C. D.* of, *&c.*

[*to*

[*to the end of the declaration*] And thereof he bringeth ſuit, and ſo-forth.

Then begin a new line, and enter the pleadings to the end of the iſſue, after which follows the award of the *Venire* in this form.— Therefore it is commanded to the ſheriff, that he cauſe to come here from the day of, *&c.* (*ſome return before the day of trial*) Twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.*

Venire facias *awarded.*

In the Common Pleas.

Trinity *term in the ſeventeenth year of the reign of king* George *the third.*

HERRETOFORE as it appeareth in the term of *Eaſter* laſt paſt in the 864. roll it is thus contained. *Middleſex, to wit*, Be it remembred, that on the 25th day of *May* in this ſame term *R. L.* came here into court by *L. R.* his attorney, and exhibited to the juſtices of our lord the king of the bench here his bill againſt *M. U.* gent. one of the attornies of the court of our ſaid lord the king of the bench here preſent, here in court in his proper perſon, in a plea of treſpaſs on the caſe, the tenor of which ſaid bill followeth in theſe words, *to wit*, To the juſtices of our lord the king of the bench. *Middleſex, to wit, R. L.* by *L. R.* his attorney complaineth againſt *M. U.* gent. one of [*ſet forth the whole bill* verbatim

Entry of an iſſue on a bill againſt an attorney, where the iſſue is joined in a term ſubſequent to that in which the bill was filed.

verbatim *to*] And thereupon he prayeth relief, *&c.* Pledges of profecuting *John Doe* and *Richard Roe.*

Imparlance. And the ſaid *M.* in his proper perſon cometh and defendeth the force and injury, when, *&c.* and prayeth leave to imparl thereupon here, until *Friday* next after the morrow of the Holy *Trinity*; and hath, *&c.* The ſame day is given to the ſaid *R.* here, *&c.* And now here at this day cometh as well the ſaid *R.* by his attorney aforeſaid, as the ſaid *M.* in his proper perſon. And upon this the ſaid *R.* prayeth, that the ſaid *M.* may anſwer to his ſaid bill, *&c.* And the ſaid *M.* as before defendeth the force and injury, *&c.* And ſaith, that he did not undertake and promiſe in manner and form as the ſaid *R.* above declareth againſt him; and of this he putteth himſelf upon the country, *&c.* And the ſaid *R.* doth ſo likewiſe, *&c.* Therefore the ſheriff is commanded that he cauſe to come here on next after Twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.*

See more of this among the pleadings at the end of the book.

In country cauſes iſſues to be delivered to the agent in town, and not to the country attorney.

In country cauſes the iſſue muſt be delivered to the agent in town, and not to the attorney in the country; and where it has been agreed between the country attornies, that the iſſue ſhould be delivered in the country, and has been afterwards tendered to the agent in town, and not paid for, judgment has been ſigned,

ſigned, and held regular. But where the defendant has pleaded by his country attorney, the iſſue may be tendered to the country attorney, and if not paid for by him, judgment may be ſigned. *Except.*

Every attorney ſhall enter his warrant of attorney in every ſuit upon record in court, on pain of 10*l.* and further puniſhment by impriſonment, at the diſcretion of the court. *Stat.* 32 *H.* 8. *c.* 30. §. 2. made perpetual. 2 & 3 *E.* 6. *c.* 32. and *vide ſtat.* 18 *Eliz. c.* 14. § 3. *Attorney to enter his warrant on record.*

Warrants of attorney are to be filed of the term wherein any exigent is awarded, demurrer or iſſue joined, or judgment entered, which ſhall firſt happen, and to be filed upon or before the eſſoin-day of every *Trinity-Term*, and within one-and-twenty days after the end of every other term. *Hil.* 14, 15. *Car.* 2. *When to be filed.*

Every plaintiff's attorney who ſhall proſecute any cauſe to iſſue, ſhall, upon the delivery of the copy of ſuch iſſue, receive of the defendant's attorney the fee for filing his warrant therein; and in caſe the defendant's attorney ſhall refuſe to pay for the ſame, the plaintiff's attorney may ſign his judgment in like caſe, as if the defendant's attorney had refuſed to pay for the copy of the iſſue, or the entry of his plea; and the plaintiff's attorney ſhall file as well the defendant's as the plaintiff's warrant of attorney. *Hil.* 2, 3. *Jac.* 2. *Deft.'s attorney, on receiving the iſſue, to pay the plt's attorney the fee for filing his warrant, otherwiſe judgment.*

The plaintiff's attorney in any action or ſuit ſhall file his warrant of attorney with the *Plt.'s attorney to file his*

warrant the term he declares, and the deft.'s attorney the term he appears.

proper officer the ſame term he declares, and the attorney for the defendant ſhall file his warrant of attorney, as aforeſaid, the ſame term he appears, under the penalties inflicted upon attornies by any former law, for default of filing their warrants of attorney. *Stat.* 4 & 5 *Annæ. c.* 16.

No judgment (except, &c.) to be ſigned before the judgment paper be ſtamped by the clerk of the warrants.

Great inconveniencies having happened by attornies neglecting to file their warrants of attorney, by which judgments have been reverſed, and plaintiffs loſt their debts; it was ordered therefore that no judgments whatſoever (except final judgment upon *poſteas*, writs of inquiry, and *Non pros'*) ſhall be ſigned by any of the prothonotaries, unleſs the ſtamp of the clerk of the warrants be impreſſed on the paper, whereon ſuch judgment is to be ſigned, whereby it may appear the warrants of attorney are duly filed. *Mich.* 5 *Geo.* 2.

The plaintiff's attorney, on delivering a copy of the declaration to the defendant's attorney, charges 8 *d.* for filing the defendant's warrant of attorney, and which he generally files at the ſame time he files the plaintiff's warrant, and on the ſame piece of parchment.

Theſe warrants are to be wrote on parchment in the following form:

Hilary *Term in the ſeventeenth year of the reign of* George *the third.*

Middleſex, *E.* *F.* putteth in his place *R. C.* his attorney againſt *A. B.* late of, *&c.* yeoman, in a plea of treſpaſs on the caſe [*or otherwiſe, as the action is.*] *Plaintiff's warrant of attorney.*

Middleſex, *A.* *B.* late of, *&c.* yeoman, putteth in his place *N. F.* his attorney, againſt *E. F.* in the plea aforeſaid. *Defendant's warrant of attorney.*

If the defendant be deſcribed in the pleadings with an *Alias dict.* or the plaintiff or defendant be an executor or adminiſtrator, he muſt be named in the warrant of attorney in the ſame manner exactly as in the pleadings.

The nature of the action muſt be expreſſed in the warrant, according as the caſe ſhall be; as thus: In a plea of debt. In a plea of treſpaſs. In a plea of treſpaſs on the caſe. In a plea of treſpaſs and ejectment of farm. In a plea of treſpaſs and aſſault. In a plea of treſpaſs, aſſault and impriſonment.

On the back of the iſſue you give notice of trial, thus:

Mr. *T. V.*

Take notice of trial in this cauſe for the ſitting after this preſent *Michaelmas-term*, at *Guildhall, London.* *Notice of trial.*

Your humble ſervant,

Jan. 5th 1778. L. R. *attorney for the plaintiff.*

Eight days in London *or* Middleſex.

If the trial is to be in *London* or *Middleſex*, (and the defendant dwells within 40 miles of *London*) there muſt be eight days notice thereof given excluſive of the day whereon the notice is given. *Mich.* 1654.

When 14 *days in* London *or* Middleſex.

If the defendant lives above forty miles from *London*, there muſt be fourteen days notice of ſuch trial to be had in *London* or *Middleſex*, excluſive of the day of the notice. *Same rule.*

Eight days in the country.

Of trials in the country there muſt be eight days notice given excluſive of the day of notice. *Same rule.* But altered as follows.

When ten days notice of trial.

No cauſe whatſoever ſhall be tried at *Niſi prius* before any judge or juſtice of aſſize or *Niſi prius*, or at the ſittings in *London* or *Weſtminſter*, where the defendant reſides above forty miles from the ſaid city reſpectively, unleſs notice of trial in writing has been given at leaſt ten days before ſuch intended trial. *Stat.* 14 *Geo.* 2. *c.* 17. §. 4.

This act does not alter the above rule, for 14 *days notice of trial in* London *or* Middleſex, *where the defendant lives above* 40 *miles from* London.

Defendant lived about 40 miles from *London*, and plaintiff proceeded to trial at ſittings there, upon *ten* days notice; no defence was made, and defendant inſiſting, that he was intitled to 14 days notice of trial, moved to ſet aſide the verdict, and had a rule to ſhew cauſe, which was made abſolute. Before this act, 14 days notice were the ſettled practice, and, unleſs obliged, court will not be bound by an act made to take away a benefit from defendant; the practice or law of the court cannot be taken away but by negative words, viz. that there ſhall be no

more than ten days; 14 days notice notwithſtanding this act, are ſtill neceſſary. *Barnes* 305.

And in caſe any perſon ſhall have given ſuch notice of trial as aforeſaid, and ſhall not afterwards duly countermand the ſame in writing at leaſt ſix days before ſuch intended trial, ſuch party ſhall be obliged to pay unto the party to whom ſuch notice of trial ſhall have been given as aforeſaid, the like coſts and charges as if ſuch notice of trial had not been countermanded. *Same ſtat.* §. 5. *And ſix days notice of countermand.*

Notice of trial on an old iſſue may be given to the attorney in the country, for it may be given either to the attorney or the agent, but where notice of trial is given on the iſſue book, it muſt be given to the agent, becauſe the iſſue can be delivered no where but in town. Notices of trial, and countermands in notices of executing writs of inquiry and countermands may be given either to the attorney in the country, or to the agent in town; but of thoſe things which are done only in town, notice, muſt be given to the agent; and all notices, where the party hath a known attorney, muſt be given to that attorney or his agent, and not to the party himſelf. *Notice of trial when to be given to attorney or agent.* *Of notices in general.*

In all caſes where there have been no proceedings for four terms, excluſive of the term in which the laſt proceeding was had, the party who deſires to proceed again, ſhall give a term's notice to the other of ſuch proceeding; ſuch notice ſhall be given before the *A term's notice where no proceeding for four terms excluſive.* *To be given before the eſ-*

ſoin day of the term. eſſoin-day of the fifth or other ſubſequent term; a judge's ſummons, if no order be made thereupon, ſhall not be deemed a proceeding; but a notice of trial, though afterwards countermanded, ſhall be deemed a proceeding within this rule. *Paſch.* 13 *Geo.* 2.

What deemed a proceeding.

Heretofore, where the plaintiff in pleading concluded *ad patriam* (to the country) he could not give notice of trial till the defendant had joined iſſue, which he was not obliged to do till a four-day-rule for that purpoſe was expired. But now in all caſes where the plaintiff concludes *ad patriam*, the defendant's attorney muſt accept notice of trial on the back of ſuch pleadings, whether the ſame be delivered to the defendant's attorney or agent, or left in the office; and ſuch notice ſhall be as effectual as if iſſue had been joined. *Trin.* 2 *Geo.* 1.

Where the plaintiff concludes ad patriam, *the defendant to accept notice of trial on the back of the pleading.*

And if don't join in iſſue, to accept of notice of inquiry from the time of the notice of trial.

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of the pleadings (purſuant to laſt rule) if the defendant does not join iſſue before the rule is out, then after judgment obtained the defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry from the time that the notice of trial was given on the back of the pleadings. *Hil.* 6 *Geo.* 1.

Notice of trial not to be given to the defendant if his attorney be known.

Notice of trial, or of executing a writ of inquiry, given to a defendant when his attorney is known, is not good notice; but when his attorney is not known, then the notice may be given to the defendant. See *Barnes* 300. See *id.* 306, 307.

Where

Where the plaintiff may give a ſhort notice of trial, as where the defendant has had time given him to plead on taking ſhort notice of trial, the plaintiff muſt give him as much notice as he can; two days at leaſt. *Barnes* 301.

Where the plt. may give ſhort notice, he muſt give as much as he can.

If the plaintiff ought to give 14 days notice of trial, if he was to proceed to trial, and the defendant intends to have the cauſe tried by proviſo, he muſt give the ſame notice of trial as the plaintiff ſhould have done. *Barnes* 299.

For trial by proviſo def. muſt give the ſame notice as plaintiff ſhould have done.

The next thing to be done is to enter the iſſue, and prepare the *Niſi prius* record for trial, which muſt be ingroſſed on a piece of parchment ſtamped with a double half-crown ſtamp, which you muſt do in this manner:

Of making up the Niſi prius *record.*

In the Common Pleas.

Pleas at Weſtminſter, *before Sir* William De Grey, *knight, and his companions, juſtices of our lord the king of the bench, of* Eaſter *Term in the ſeventeenth year of the reign of our ſovereign* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c.

Roll.

Middleſex, *to wit,* C. L. late of, &c. gentleman, was attached to anſwer *R. R.* of a plea of treſpaſs, on the caſe; and whereupon

upon the ſaid *R. R.* by *J. S.* his attorney complaineth, that whereas, &c. *(to the end of the iſſue and award of the* Venire.)

Note; In the *Common Pleas* the *Placita* is wrote but once, except on the death or change of a chief juſtice, or on an old record, in which caſe you write a ſecond *Placita*; then you write the *Jurata* in this manner.

Middleſex, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, &c. gentleman, in a plea of * treſpaſs on the caſe, are reſpited here until on the morrow of the Holy *Trinity* (the return of the *Habeas corpora juratorum*, and which ſhould be the next return after the day of trial) unleſs Sir *Eardely Wilmot*, knight, the king's chief juſtice of the bench, here aſſigned by form of the ſtatute in that caſe made and provided, ſhall come before, on *Tueſday*, the day of [*the day of the ſittings*] at *Weſtminſter*, in the great hall of pleas, there, commonly called *Weſtminſter-hall*, in the ſaid county of *Middleſex* (if in *London*, ſay, at the *Guildhall* of the city of *London* aforeſaid) for default of the jurors, becauſe none came: Therefore let the ſheriff have the bodies of the ſeveral perſons mentioned in the panel annexed to the writ of *Habeas corpora juratorum*. And be it known

* In replevin ſay, taking and unjuſtly detaining the cattle of the ſaid *R.*

that

that the juſtices here in court in this ſame term delivered a writ thereupon to the deputy of the ſheriff of the county aforeſaid, to be executed in form of law, *&c.*

If the trial is to be had at the aſſizes, the form of the *Jurata* is as follows :

For the aſſizes.

Lincoln, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, *&c.* gentleman, in a plea of treſpaſs on the caſe, is reſpited here until on the morrow of *All Souls*, unleſs our lord the king's juſtices, aſſigned to take the aſſizes in the county aforeſaid by form of the ſtatute in that caſe made and provided, ſhall come before on (*the day the aſſizes are to be held*) at (*the place where they are to be held*) in the county aforeſaid, for default of the jurors, becauſe none came: Therefore, *&c.* (*as before.*)

When the *Niſi prius* record is prepared, you are to carry it, and the roll whereon you have entered the iſſue, to the proper prothonotary, who on being paid for the entry will mark both the record and roll; then you go to the clerk of the treaſury, who will examine and ſee that the *Jurata* is rightly entered, and ſign and ſeal the record.

No record of Ni. Pri. *to be ſigned before iſſue entered.*

No record of *Niſi prius* is to be ſigned before the iſſue be entered upon the roll. *Mich.* 1654. *Paſ.* 5 *W. & M.*

Iſſues to be entered the ſame term they are joined.

And all iſſues are to be entered of the term they are joined. *Paſ.* 5 *W. & M. Hil.* 11 *Geo.* 1.

Every

In what manner records of Niſi prius *are to be ingroſſed.*

Every record of *Niſi prius* is to be ingroſſed in a fair legible character, and ſo entered on the roll; the beginning of every pleading to begin with a new line, and the firſt word in a greater character than the reſt; and in all actions that have divers narrs, [*i. e.* counts] notice thereof muſt be given by figures in the margin of ſuch record of *Niſi prius*; and all records of *Niſi prius* that ſhall be ingroſſed in this court are to be of the exact breadth of the rolls of the court, and no broader or leſſer. *Trin.* 29 *Car.* 2.

Within what time they muſt be made up for the aſſizes.

Records of *Niſi prius* for trials at the aſſizes ſhall be ſigned by the reſpective prothonotaries, and ſigned and ſealed by the clerk of the treaſury within the ſpace of three weeks next after the end of every *Hilary* term, and of every *Trinity* term, and not afterwards unleſs by ſpecial order. *Trin.* 29 *Car.* 2.

No record of Niſi prius *to be ſealed, unleſs ſigned by the clerk of the warrants.*

The clerk of the treaſury ſhall not ſign or ſeal any record of *Niſi prius*, unleſs the ſame ſhall be firſt ſigned or ſtamped by the clerk of the warrants. *Hil.* 2, 3 *Jac.* 2.

Attendance will be given for ſealing records of *Niſi prius*, in this court, *viz.*

For *London* and *Middleſex* at the treaſury office, in *Weſtminſter-hall*, during the term, and the ſettings for *Middleſex*, from the ſitting to the riſing of the court;

For *London* after the ſittings for *Middleſex* are over, at the lord chief juſtice chambers, in *Serjeants Inn*, from 5 to 7 o'clock, in the afternoon during the ſittings in *London*.

For

For the aſſizes, at the *L. C.* juſtice's chambers from 10 to 12 o'clock in a forenoon, and from 5 to 7 in an afternoon, as uſual, during the time of the aſſizes. By notice fixed up in the common pleas office, tempore *Wilmot* Ch. J.

As no continuances are neceſſary to be inſerted in the record of *Ni. Pri.* if defendant dies after iſſue joined, and before the day of *Ni. Pri.* ſuggeſtion thereof, and award of *Ven. Fa.* entered on the roll after trial, ſufficient. *Barnes* 469.

No record or writ of *Ni Pri.* is received at any ſitting after Term in * *Middleſex*, unleſs delivered to, and entered with the marſhal within two days after the laſt day of every term. Rule of *E.* 2 *Geo.* 3. *C. B. Barnes* 494.

The form of a Venire facias.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. We command you, that you cauſe to come before our juſtices at *Weſtminſter*, on the morrow of the *Purification* of the bleſſed *Mary*, twelve free and lawful men of the body of your coun- Venire facias.

* Nor in *London*, unleſs entered the day before the day, to which the ſitting is adjourned. Same rule. *Barnes* ib,

ty,

	s.	d.
Duty	2	0
Signing	1	4
Seal	0	7
	3	11

ty, each of whom has ten pounds of lands, tenements or rents by the year at leaſt, by whom the truth of the matter may be better known, and who are in no ways of kin, either to *R. K.* the plaintiff, or to *J. W.* late of, *&c.* or to *W. S.* late of, *&c.* [*if the defendant be declared againſt with an* Alias dict', *or as an executor or an adminiſtrator, he muſt be here deſcribed as in the pleadings*] to make a certain jury of the county between the parties aforeſaid, in a plea of taking and unjuſtly detaining cattle [*as the action is*] becauſe as well the ſaid *J. W.* and *W. S.* (*the party who firſt takes the iſſue,*) as the ſaid *R. R.* between whom the matter in variance is, have put themſelves upon that jury; and have there the names of the jurors and this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the 23d day of *January* in the ſeventh year of our reign.

Dickins.

Inſert the cauſe of action in the *Venire* as the caſe ſhall be, thus:

Debt. In a plea of debt.

Caſe. In a plea of treſpaſs on the caſe.

Aſſault. In a plea of treſpaſs and aſſault.

Aſſault and impriſonment. In a plea of treſpaſs, aſſault and impriſonment.

Ejectment. In a plea of treſpaſs and ejectment of farm.

Covenant. In a plea of breach of covenant.

Replevin. In a plea of taking and unjuſtly detaining cattle.

Detinue. In a plea of detaining goods, or writings.

If

If the defendant carries down the cauſe to be tried by proviſo, the writ runs thus:

And have here the names of the jurors and this writ; provided always, that if two writs ſhall thereupon come to you, that you only return one of them to our ſaid juſtices at *Weſtminſter*, at the time aforeſaid. *By proviſo.*

You carry this writ to the prothonotary to be ſigned, for which you pay him 1*s.* 4*d.* and then to the ſeal office to be ſealed, for which you pay 7*d.*

When you have this writ returned by the ſheriff, you carry it to the clerk of the jury, and he will make out a writ of *Habeas corpora juratorum*, which you carry to the ſheriff, and he alſo returns.

The form of the Habeas corpora juratorum.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *E.* greeting. We command you, that you have before our juſtices at *Weſtminſter*, from the day of *Eaſter* in 15 days [*the day in bank the next return after the trial*] or before our juſtices aſſigned to take the aſſizes in your county, by force of the ſtatute in that caſe provided, if they ſhall come before, on the day of [*the day the aſſizes are held*] at [*the place where*] in your county, the bodies of the ſeveral perſons

Habeas corpora. Officina brev. 140.

	s.	*d.*
Fi Ven.	0	4
Ha. Co.	1	8
Duty	2	0
Seal	0	7
	4	7

ſons named in the panel annexed to this writ, jurors ſummoned in our court before our juſtices at *Weſtminſter*, between *R. K.* plaintiff, and *J. W.* late of, *&c.* and *W. S.* late of, *&c.* of a plea of taking and unjuſtly detaining cattle, [*as the action is*] to make that jury; and have there this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Harriſon.

The form of the Subpœna ad teſtificandum.

Subpœna ad teſtificandum.

	s.	d.
Duty	2	0
Signing	1	0
Seal	0	7
	3	7

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command, and firmly injoin you and each of you, that laying all other matters aſide, and notwithſtanding any excuſe, you be in your proper perſons before our juſtices at the aſſizes to be held, at [*the place where the aſſizes are to be held*] in the county of *S.* on [*the day when*] next enſuing, to teſtify and ſpeak the truth in a certain matter of controverſy pending undetermined in our court before our juſtices at *Weſtminſter* between *A. B.* plaintiff, and *C. D.* late of *E.* in the ſaid county of *S.* gentleman, defendant, in a plea of treſpaſs; [*as the action is*] and this you are not to omit, nor is any one of you to omit, under

under the penalty on each of you of one hundred pounds. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Cooke.

If the trial be to be had in *London*, you ſay thus,—That, *&c.* you be before Sir *John Eardley Wilmot*, knight, our chief juſtice of the bench at *Guildhall*, *London*, on [*the day of ſittings*] to teſtify, *&c.*

If in *Middleſex* thus; before Sir *John Eardley Wilmot*, knight, our chief juſtice of the bench at *Weſtminſter*, in the great hall of pleas there, called *Weſtminſter-hall*, to teſtify, *&c.*

This *Subpœna* you carry to the proper prothonotary to be ſigned, for which you pay 1*s.* and to the ſeal-office to be ſealed, for which you pay 7*d.* and then you make out tickets for each of the witneſſes in the following form:

Mr. *R. B.*

By virtue of a writ of *Subpœna* to you directed, and herewith ſhewn unto you, you are commanded perſonally to be and appear before his majeſty's juſtices of aſſize [*or the chief juſtice as before directed, according as the caſe is*] at [*the place*] on the day of by of the clock in the noon of the ſame day, to teſtify the truth, according to your knowledge, in a certain cauſe now depending, and there

Subpœna *ticket.*

there to be tried between *A. B.* plaintiff, and *C. D.* late of in the county of gentleman, defendant, in a plea of treſpaſs [*as the action is*] on the part of the plaintiff [*or the defendant, if at his inſtance ſubpœna'd*] and hereof you are not to fail, upon pain of one hundred pounds. Dated the day of in the year of our Lord 1778, and in the year of the reign of our ſovereign lord *George* the third, king of *Great Britain*, &c.

J. R. attorney.

Cauſe to be entered with marſhal. Formerly four days before the day of trial.

Before you go to trial you muſt enter your cauſe with the judge's marſhal.

Cauſes to be tried in *London* or *Middleſex* ought to be entered in the marſhal's book four days before the day of trial. *Mich.* 1654.

Now two.

But notwithſtanding this rule, and though there is none other to the contrary, two days at this time are reckoned ſufficient.

Records to be brought in before the ſittings after term.

Ne recipiatur ſhall be allowed to be entered for the ſittings at *Niſi prius* after every term, unleſs the records of *Niſi prius* and the writs be made up and brought into court on or before the days and ſittings reſpectively. *Hil.* 8 *Geo.* 1.

On circuit writ and record to be entered together.

In every cauſe to be tried in the circuits, the writ and record ſhall be entered together, and no record ſhall be received without the writ. *Trin.* 10 & 11 *Geo.* 2.

On circuit in what time record to be

No writ and record of *Niſi prius* ſhall be received at the aſſizes in any county in *England*,

land, unleſs they ſhall be delivered to, and entered with the marſhal, before the firſt ſitting of the court after the commiſſion-day, except in the counties of *York* and *Norfolk*; and there the writs and records ſhall be delivered to, and entered with the marſhal before the firſt ſitting of the court, on the ſecond day after the commiſſion-day, otherwiſe they ſhall not be received. *Hil.* 14 *Geo.* 2. *brought and entered.*

Every cauſe ſhall be tried in the order in which it is ſo entered, without any preference or delay, unleſs it ſhall be made out to the ſatisfaction of the judge in open court, that it is impracticable or inconvenient ſo to do, who thereupon may make ſuch order for the trial of the cauſe, ſo put off, as to him ſhall ſeem juſt. *Same rule.* *Cauſes to be tried in the order entered.*

A liſt of the cauſes, when ſo entered as aforeſaid, ſhall be made by the marſhal, and forthwith fixed up in ſome public place in the *Niſi prius* court, there to remain during the whole time of the aſſizes. *Same rule.* *Liſt of cauſes to be made and hung up.*

If the cauſe be to be tried in *London* or *Middleſex*, you pay, for entering the cauſe with the marſhal, 13 *s.* 9 *d. viz.* the chief juſtice 10 *s.* 9 *d.* Marſhal 2 *s.* Aſſociate 1 *s.* *Entring fee in* London *or* Middleſex.

If the trial be at the aſſizes, the fee for entering the cauſe is but 11 *s.* 8 *d. viz.* the judge 6 *s.* 8 *d.* Clerk of aſſize 2 *s.* Marſhal 2 *s.* Cryer 1 *s.* *At the aſſizes.*

If the plaintiff gives notice of trial for the aſſizes, and don't bring the trial on, he can't go down to trial again without new notice, unleſs by conſent or rule of court. *If plt. don't go to trial at aſſizes, muſt give new notice.*

In London *or* Middlesex *may give new notice, before the day of sitting, for the next sitting.*

But in *London* or *Middlesex*, if the plaintiff gives notice of trial for one sitting, and be not provided to proceed, he may give notice before that sitting, that he will try it at the next sitting. *Mich.* 1654.

Plt. can continue his notice but once.

The plaintiff cannot continue his notice of trial a second time, *i. e.* he can give short notice of trial but once; but if the full time be given by the notice of continuance the word *continue* will not vitiate the notice. See *Barnes* 301. *Rich. Pract. Reg.* 394. *Co. Cas.* 146.

Can't countermand and continue in the same notice.

The plaintiff gave notice of trial for the first sitting within term, then gave notice that he countermanded the notice of trial for the first sitting, and continued it for the second; the defendant made no defence at the trial, and the plaintiff had a verdict. But on a motion the court said the plaintiff could not countermand and continue in the same notice, and set the verdict aside. *Smith* v. *Hough*, *Hil.* 11 *Geo.* 2. *Barnes* 301. *Pract. Reg. C. P.* 394. *Rep. and Cas. of Pract. C. P.* 146.

If plt. don't proceed to trial according to notice, nor countermand, he shall pay costs.

In case the plaintiff gives notice of trial, and don't go to trial accordingly, the defendant upon motion shall have his costs of attendance, to be taxed by the prothonotary, unless the plaintiff countermand his notice in convenient time, or shew cause to be allowed by the court in excuse of such costs. *Mich.* 1654.

Both p't. and def. giving notice of trial, and neither proceeding to trial, each paid costs.

The defendant gave notice of trial by proviso, and the plaintiff also gave notice of trial; neither went on to trial, or countermanded, and both got rules for costs for not going on to trial; the prothonotary doubted whether both

both were intitled to coſts, and the judges were of opinion, that as both ſides gave notice of trial, and neither proceeded to trial, each ſide was intitled to coſts. *Reading* v. *Grafton*, *M.* 13 *Geo.* 1. *Pract. Reg.* 405.

Countermand at the aſſizes.

No countermand of trial at the aſſizes ſhall be good unleſs notice be given two days before the commiſſion-day. *Mich.* 5 *Geo.* 1. The commiſſion-day on a *Monday*, a countermand on the *Saturday* held to be regular. See *Barnes* 305.

In London *and* Middleſex.

And in *London* or *Middleſex* the countermand muſt be two days before the ſitting for which notice was given. See *Barnes* 298. *Antea*, *fol.*

Counterm. after record made a Remanet.

Notice of trial may be countermanded after the record is made a (*a*) *Remanet*.

Coſts of a former aſſizes, when a cauſe is made a *Remanet*, not allowed, unleſs by conſent of parties expreſſed in a rule or order entered into for that purpoſe. *Barnes* 150, 153.

Where cauſe goes off by conſent on withdrawing a juror, and reference to arbitrators, and no award being made, cauſe is again brought on to trial; the coſts of the firſt, ſhall attend the event of the ſecond trial, as well in this caſe as that of a *Remanet*. Rule of *H.* term, 8 *Geo.* III.

(*a*) That is to ſay, *remains* untried without any fault of the parties, and is therefore on the front of the paper of cauſes for the next ſitting. *Rayn.* Read on *ſtat.* 2 *Geo.* II. chap. 23. 4*to. p.* 127, in notes.

Coſts for the future are to be allowed when a cauſe goes off, and *remains* to be tried, for want of jurors. 2 *Wilſ.* 366.

When on default of the plaintiff's going to trial the court ſhall give judgment of nonſuit.

Where iſſue is or ſhall be joined, and the plaintiff hath neglected or ſhall neglect to bring ſuch iſſue on to be tried, according to the courſe and practice of the court, it ſhall be lawful for the judges at (*b*) any time after ſuch neglect, upon motion made in open court (due notice having been given thereof) to give the like judgment for the defendant as in caſes of nonſuit, unleſs the judges ſhall upon juſt cauſe and reaſonable terms allow any further time or times for the trial of ſuch iſſue. And if the plaintiff ſhall (*c*) neglect to try ſuch iſſue within the time or times ſo allowed; then and in every ſuch caſe the judges ſhall proceed to give ſuch judgment as aforeſaid. *Stat.* 14 *Geo.* 2. *c.* 17. *ſ.* 1.

Of obtaining judgment, as in caſe of a nonſuit, for not proceeding to trial, in due time.

If plaintiff doth not proceed to try his cauſe in due time, defendant is intitled to judgment as in caſe of a nonſuit, by virtue of the above ſtatute; in order to obtain which, a rule muſt in the firſt place be given for plaintiff to enter the iſſue on record, (which is a four day rule, excluſive of the day of ſervice) if he fails in this, defendant may

---

(*b*) The court was of opinion, that defendant ought to apply for judgment on this act, the very next term after default; *Barnes* 314. See *Id.* 318. but I conceive as the act is general, *any time after ſuch neglect*, no court of juſtice can limit the time of application.

(*c*) This ſtatute is founded on neglect. *Barnes* 315.

have

have the like judgment, as in caſe of a (*d*) nonſuit.

When the roll is brought in, either in purſuance of a rule or without, it will be neceſſary to give the officer (*e*) of the court, in whoſe cuſtody the roll or record is, notice to produce the ſame; notice alſo muſt be given of the (*f*) motion, and there muſt be an affidavit of the ſtate of the proceedings, of plaintiff's default in trying the (*g*) cauſe; and alſo of the ſervice of the notice of motion; upon reading of which affidavits, and of the entry of the iſſue on record (*h*); court will make a rule for plaintiff to ſhew cauſe, why the like judgment ſhould not be given for the defendant, as in the caſe of a nonſuit; which, upon no ſufficient cauſe being ſhewn, will be ordered accordingly.

(*d*) *Barnes* 313.

(*e*) Viz. The clerk of the jurats, or the under clerk of the Treaſury, Mr. *George Stubbs*, who reſides near Old Palace Yard *Weſtminſter*, and is Treaſury-keeper, and as he lives ſo near the repoſitory of the rolls of this court, the ſame being under the *Exchequer*, on the right hand, as you enter *Weſtminſter* Hall Gate, from Old Palace Yard, you may meet with him or his clerk almoſt any hour in term time.

(*f*) But not a terms notice in any caſe. *Barnes* 308.

(*g*) Objection, by plaintiff's council, that, in order to ſupport a motion on this act, there ought to have been an affidavit, *that the cauſe was not tried*; and it was allowed, and rule *Niſi* diſcharged. *Barnes* 316 This affidavit muſt not be ſworn before plaintiff's attorney. *Barnes* 313.

(*h*) *Barnes* 313.

Cauſes held ſufficient, by the court, to prevent a nonſuit on this act of parliament.

1. Plaintiff's own illneſs. *Barnes* 313.

2. That plaintiff's attorney died by the hand of God. *Barnes* 315.

3. That defendant, by ſome act of his, hindered the trial of the cauſe. *Barnes* 315, 498. See *Id.* 443.

4. Plaintiff's marriage, for thereby the ſuit is abated *de facto*. *Barnes* 314.

5. Plaintiff's witneſſes being diſabled with the gout. *Barnes* 316.

When a further time is granted, the court appoints a time for the trial, as at the next aſſizes, or at ſome ſitting in *London* or *Middleſex*, according as where the action is to be tried. *Barnes* 313. If the defendant applies for coſts for not going to trial, purſuant to notice, he has made his election, and cannot move for judgment, as in caſe of a nonſuit. *Barnes* 131, 314, 315, 316. Though further time for going to trial hath been given, yet upon reaſonable cauſe it may ſtill be enlarged, notwithſtanding the word (*i*) *peremptory* in the rule. Such judgment may be given in an action *Qui tam*, *&c.* or replevin. *Barnes* 315, 316, 318. Where the excuſe for not proceeding to trial, according to the rules of the court, is a ſufficient excuſe, the court, on

(*i*) The word *peremptory* in the rule doth not preclude the court from a further enlargement of the time, if they think it reaſonable; it is wrong to inſert the word *peremptory*, for the ſecond excuſe may be better than the firſt. *Barnes* 315.

giving

giving further time, will not make the plaintiff pay the coſts of the application, but only the coſts for not proceeding to trial. *Barnes* 316, 317, 318.

For trial at ſittings after term, no Ne recipiatur *till after proclamation.*

You cannot, on notice of trial for the ſittings after term, enter a *Ne recipiatur* till after proclamation made for bringing the records in.

Motion to put off a trial whn.

Motion to put off a trial, for that a material witneſs is out of the way, and cannot be had at the trial, muſt be made at leaſt two days before the day for which the notice of trial was given. *Rep. & Caſ. of Pract. C. P.* 98, 105, 150. *Pract. Reg. C. P.* 399, 400. *Barnes* 437, 440, 442, 444.

Not to be granted if the witneſs was in the way when notice of trial given.

But if it appears that this witneſs, who is ſworn to be a material witneſs, went out of town or abroad beyond ſea after the notice of trial was given, the court will not put off the trial for it; the defendant might have ſubpœna'd him in time. *Barnes* 437.

Party applying for a ſpecial jury to pay the whole expence; and not allowed more than for a common jury.

The perſon, or party, who ſhall apply for a ſpecial jury, ſhall not only bear and pay the fees for ſtriking ſuch jury, but ſhall alſo pay and diſcharge all the expences occaſioned by the trial of the cauſe by ſuch ſpecial jury; and ſhall not have any farther or other allowance for the ſame, upon taxations of coſts, than ſuch perſon or party would be intitled unto, in caſe the cauſe had been tried by a common jury; unleſs the judge, before whom the cauſe is tried, ſhall, immediately after the trial, certify in open court under his hand, upon the back of the record, that the

Unleſs, &c.

ſame was a cauſe proper to be tried by a ſpecial jury. *Stat.* 24 *Geo.* 2. *c.* 18.

What allowance to ſuch jury for ſerving.

No perſon who ſhall ſerve upon a ſpecial jury, or be returned, ſhall be allowed or take for ſuch ſerving on any ſuch jury, more than the judge who tries the cauſe ſhall think juſt and reaſonable, not exceeding 1 *l.* 1 *s.* except in cauſes wherein a view hath been directed. *Same ſtat.*

Venire *on a penal ſtat. to be* de corpore com'.

Every *Venire* for the trial of any iſſue in any action or information, upon any penal ſtatute, ſhall be awarded of the body of the proper county where ſuch iſſue is triable. *Same ſtat.*

On trials at bar, plt.'s attorney to give notice of the day to chief prothonotary.

On trials at bar, which are to be moved for, the plaintiff's attorney muſt before the eſſoin-day of the term, in which the cauſe is appointed to be tried, give notice to the chief prothonotary or his ſecondary, of the day on which ſuch cauſe is to be tried, that the ſame may be put down in the court-book; and in caſe of neglect, and without motion and ſpecial direction of the court, ſuch cauſe ſhall not be tried that term. *Hil.* 9 *Ann.*

On trials at bar, judges to have copies of the iſſues 4 days before trial.

On trials at bar, the lord chief juſtice and the other judges are to have copies of the iſſues in ſuch cauſes delivered to them four days before the time appointed for trial. *Mich.* 3 *Geo.* 2.

Clerks of aſſize and aſſociate to return Poſtea's.

Every clerk of aſſize, and the aſſociate to the lord chief juſtice, ſhall make returns of *Poſtea's* upon records iſſuing out of this court, whereupon any proceedings have been by virtue of any writ of *Niſi prius*, *Diſtringas*, or *Habeas corpora juratorum*, and cauſe the ſame

to

to be delivered to the reſpective prothonotaries, upon the *Quarto die poſt* of the return of the writ of *Niſi prius* in bank, under the penalty of 20 *l.* And, that all excuſes may be taken away, the reſpective clerks of aſſize and aſſociate at the trial ſhall take the fees due to them reſpectively for the return of every ſuch *poſtea*. *Paſch.* 2 *Jac.* 2.

After the trial is over, and the record is returned with the *poſtea* ingroſſed, you get the *poſtea* ſtamped with a double half-crown ſtamp, and apply to the prothonotary to tax your coſts, and then deliver the record and *poſtea* to the clerk of the judgments, who continues the ſame on the roll, and awards judgment.

Where final judgment ſhall be ſigned upon a *poſtea*, the *poſtea* ſhall immediately be left with the clerk of the judgments of the prothonotary, and ſhall not afterwards be taken out of the office without leave of the court. *Trin.* 13 *Geo.* 2. *Poſtea to be left with clerk of the judgments.*

In caſe a ſpecial verdict be found, the plaintiff's attorney muſt enter the proceedings to the end of the ſpecial verdict on record, and deliver it to the ſecondary in court, and get a ſerjeant to move for a *Concilium*, or day for argument, then draw up the rule, and ſerve it on the defendant's attorney. *Of ſpecial verdicts.*

In cauſes entered in the court-book for argument at the bar on ſpecial verdicts or demurrers, the attornies concerned in the cauſe ſhall deliver true copies of the record to the reſpective juſtices of the court, by the ſpace of one week at leaſt next before the day appointed *Paper-books on ſpecial verdicts or demurrers how to be delivered.*

pointed for ſuch argument; namely, the attorney for the plaintiff, one copy thereof to the lord chief juſtice, and another to the ſenior judge; and the attorney for the defendant like copies to each of the other two juſtices. *Paſch.* 27 *Car.* 2.

No argument till books delivered.

No arguments by counſel on either ſide ſhall be heard at the bar, until books be delivered to all the judges. *Same rule.*

If either neglect, the other ſide may deliver all the books.

In caſe the attorney of either party ſhall not deliver books as he ought; then if the attorney on the other ſide, for expediting his client's cauſe, will deliver books to all the judges three days at the leaſt before the argument, counſel ſhall be heard on his client's behalf, at the day appointed, and the attorney delivering books as aforeſaid ſhall be reimburſed the charges of delivering the two books, which ought to have been delivered by the attorney of the adverſe party, which charges the ſaid attorney ſhall be bound to pay upon the demand thereof. *Same rule.*

And be reimburſed by the attorney making default.

If not paid before judgment, to be allowed in coſts.

If the charges of delivering the ſaid two books ſhall not be paid before judgment ſhall be given in the cauſe, the charges of delivering the ſaid books ſhall be allowed upon taxing coſts, and in that caſe the attorney ſhall not be compelled to pay the ſaid coſts; but if no coſts are to be taxed in the caſe, then the attorney making default in delivering of the books as aforeſaid, ſhall be compelled to pay the charges of the copies ſo delivered by the attorney of the adverſe party, by attachment or otherwiſe, as the court ſhall think fit. *Same rule, vide poſtea.*

If no coſts, attachment againſt attorney making default.

A motion in arreſt of judgment muſt be made within the firſt four days, *i. e.* before, or on the appearance day of the return of the *Habeas corpora juratorum*. *Barnes* 445. *Motion in arreſt of judgment, when.*

If the motion be on the laſt day of term, the party, who moves an arreſt of judgment, muſt produce an affidavit, that he has given notice of his motion to the other ſide. *Notice, if on the laſt day of term.*

After a motion in arreſt of judgment the party can't move to ſet aſide the verdict, unleſs it be upon a matter diſcloſed after the motion in arreſt of judgment, and the motion to ſet aſide the verdict be made before judgment pronounced. See *Barnes* 441, 443. *Not after motion to ſet aſide verdict; unleſs*, &c.

Verdicts have been frequently ſet aſide for exceſſive damages, but never for ſmallneſs of damages; but ſee *Barnes* 448, 455. *Verdict ſet aſide for exceſſive damages.*

A motion for a new trial can't be made after the appearance-day of the return of the *Habeas corpora juratorum*, unleſs the foundation of the motion be ſome matter diſcovered afterwards. *Motion for new trial.*

Where the iſſue lay on the defendant, as *Solvit ad diem*, *Son aſſault*, &c. and the defendant's witneſſes have been examined, the court ſeldom grants a new trial. *Seldom, when iſſue lay on defendant.*

In ejectment, where a verdict is for the defendant, it is not uſual to grant a new trial, becauſe the plaintiff may bring a new ejectment, and no other diſadvantage happens to him; but where the verdict is for the plaintiff, a new trial is often granted; for then the conſequence of not granting a new trial is the alteration of the poſſeſſion of the premiſſes. See *Barnes* 440. *Seldom in ejectment, if verdict* pro D. aliter *if* pro Q.

When

When final judgment is obtained, the party is to proceed to execution; of which see hereafter.

As we spoke of iſſues triable by juries, we ſhall ſay ſomething of iſſues triable by the judges, or by record, as on demurrers, and pleas of *Nul tiel record.*

Of demurrers.

General demurrer to a declaration.

AND the ſaid *W.* by *A. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid declaration in form aforeſaid made and declared, and the matter therein contained, are not ſufficient in the law for the ſaid *S.* to have or maintain his ſaid action againſt him the ſaid *W.* and that he the ſaid *W.* hath no need, nor is he obliged by the law of the land to anſwer the ſaid declaration in manner and form aforeſaid made and declared: And this he is ready to verify: Wherefore for want of a ſufficient declaration in this behalf, the ſaid *W.* prayeth judgment, and that the ſaid *S.* may be barred from having his ſaid action againſt him the ſaid *W.* &c.

Joinder.

And the ſaid *S.* inaſmuch as he hath above declared ſufficient matter in the law to have and maintain his ſaid action againſt the ſaid *W.* which he is ready to verify; which ſaid matter the ſaid *W.* hath not denied, or given any anſwer thereto, but intirely refuſeth to admit the verifying the ſame; the ſaid *S.* prayeth judgment, and his damages by occaſion

caſion of the premiſſes to be adjudged to him, *&c.*

And becauſe the juſtices here will adviſe themſelves of and upon the premiſſes before they give their judgment thereon, day is given to the ſaid parties here from the day of St. *Martin* in fifteen days to hear their judgment, for that the ſaid juſtices here are not yet adviſed thereof, *&c.* Concilium.

And the ſaid *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and craveth oyer of the ſaid writ of our lord the king of privilege; and it is read to him in theſe words, *to wit*, *George* the ſecond, *&c.* [ſetting forth the whole writ *in hæc verba.*] Witneſs Sir *Robert Eyre*, knight, at *Weſtminſter*, the third day of *July*, *&c.* which being read and heard, the ſaid *W.* prayeth judgment of the ſaid writ and declaration aforeſaid of him the ſaid *W.* becauſe he ſaith, that the ſaid writ, and the declaration thereupon aforeſaid, in manner and form aforeſaid made and declared, and the matter in them contained, are not ſufficient in the law for the ſaid *W.* to have and maintain his action aforeſaid againſt him the ſaid *R.* to which ſaid writ and declaration in manner and form aforeſaid made and declared he had no need, nor is he by the law of the land held or obliged, in any manner to anſwer; And this he is ready to verify; wherefore, and for want of a ſufficient writ and declaration in this behalf, the ſaid *R.* prayeth judgment, and that the ſaid *W.* from his action aforeſaid may be debarred, *&c.* and for cauſes of demurrer, 3 Lev. 130. *Special demurrer to a writ and declaration, at the ſuit of any attorney.* *Oyer of the writ.*

murrer in law in this behalf he the ſaid *R.* according to the form of the ſtatute in ſuch like caſes made and provided, ſheweth to the court theſe following; that is to ſay, for this, that it appeareth to this court, that the ſame writ of our ſaid lord the king of privilege was had and ſued out upon the third day of *July* in the eighth year of the reign of our ſaid lord the king, which day of ſuing out thereof was before the day on which the ſaid *W.* has in his ſaid declaration thereupon alledged and declared, that the ſaid treſpaſſes, aſſaults, batteries, woundings and impriſonments, charged upon him the ſaid *R.* in and by the ſaid declaration, were done and committed; and alſo for this, that between the writ and declaration are diverſe variances; and alſo for this, that the ſaid declaration in form aforeſaid made and declared is in itſelf repugnant, inſenſible, contradictory, and wanteth form, and ſo forth; and hereupon the ſaid *R. D.* demandeth the aforeſaid *W. O.* to join in demurrer with him the ſaid *R.* And hereupon a day is given by the court of our ſaid lord the king of the bench here, to the ſaid *W.* before his majeſty's juſtices at *Weſtminſter*, until next after to join in the demurrer in law with the ſaid *R.* And the ſaid *W.* at the ſame day being ſolemnly required came not, neither is his writ of our ſaid lord the king of privilege aforeſaid againſt the ſaid *R.* further proſecuted, but he made default: Therefore it is conſidered, that the ſaid *W.* take nothing by his ſaid writ, but that he and his pledges to proſecute, to wit, *J. D.* and *R. R.*

Writ teſted before the cauſe of action.

Variance, &c.

Day for plaintiff to join in demurrer.

Plaintiff makes default.

Judgment againſt the plaintiff.

R. R. be thereof in mercy, *&c.* and that the ſaid *R.* do go thereof without day, *&c.* And further it is conſidered by the court here, that the ſaid *R.* recover againſt the ſaid *W.* 3 *l.* 16 *s.* 8 *d.* for his expences and coſts by him about his defence in this part ſuſtained, to the ſaid *R.* by the court here, according to the form of the ſtatute in ſuch caſe lately made and provided, adjudged, *&c.* and that the ſaid *R.* have his execution for the ſame, *&c.*

General demurrer to a plea.

And the ſaid *C.* ſaith, that the aforeſaid plea of the ſaid *F.* above pleaded in bar, is not ſufficient in law to bar him the ſaid *C.* from his ſaid action againſt the ſaid *F.* and that he the ſaid *C.* hath no need, nor is bound by the law of the land, to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore for default of a ſufficient plea in this behalf the ſaid *C.* prayeth his ſaid debt, together with his damages by occaſion of detaining that debt, to be adjudged to him, *&c.*

Joinder.

And the ſaid *F* for that he hath above alledged ſufficient matter in law to bar the ſaid *C.* from having his ſaid action againſt him the ſaid *F.* which he is ready to verify, which ſaid matter the ſaid *C.* hath not denied, nor any ways anſwered thereunto, but wholly refuſeth to admit the verification thereof, prayeth judgment, and that the ſaid *C.* may be barred from having his ſaid action, *&c.* And becauſe the juſtices, *&c.*

Demurrer to declaration for not alledging

And the ſaid *J. S.* and *M.* by *C. B.* their attorney, come and defend the force and injury,

that administration was granted to defendant.

injury, when, *&c.* and pray judgment of the ſaid declaration: Becauſe they ſay, that the ſaid declaration and the matter therein contained are not ſufficient in law to maintain the action of the ſaid *D.* againſt them the ſaid *J. S.* and *M.* to which ſaid declaration the ſaid *J. S.* and *M.* have no need, nor are they obliged by the law of the land to anſwer; and this they are ready to verify: Wherefore for want of a ſufficient declaration in this caſe, the ſaid *J. S.* and *M.* pray judgment of the ſaid declaration, and that the ſame may be quaſhed, *&c.* And the ſaid *J. S.* and *M.* according to the ſtatute ſhew the cauſes of demurrer following, *to wit*, that it is not alledged in the ſaid declaration how, or by whom letters of adminiſtration were granted; nor is it alledged that adminiſtration was ever granted to the ſaid *J. S.* and *M.* And alſo that the ſaid declaration is uncertain and wanteth form.

Special demurrer to a plea of Nil debet *to a bail bond.*

And the ſaid *E. H.* ſaith, that the ſaid plea of him the ſaid *F. S.* in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *F.* and that he the ſaid *E.* hath no need, nor is he obliged by the law of the land to anſwer the ſaid plea of him the ſaid *F.* in manner and form aforeſaid above pleaded; and this he is ready to verify: Wherefore for want of a ſufficient plea in this behalf the ſaid *E.* prayeth judgment, and that his ſaid debt, together with his damages by reaſon of the detaining of that debt, may be adjudged to him,

him, &c. And for cauſes of demurrer in Law in this behalf, the ſaid *E.* according to the form of the ſtatute in ſuch caſes made and provided, ſheweth to the court here theſe cauſes following; (that is to ſay) for this, that the ſaid *F. S.* hath not by his ſaid plea particularly denied nor confeſſed the ſaid deed in the ſaid declaration alledged; and alſo for this, that the ſaid *F.* is eſtopped by the ſaid deed to ſay, that he doth not owe the money in the ſaid deed mentioned, and ought to have ſhewn by his plea how he is diſcharged from the ſame. *Cauſes of demurrer.*

And the ſaid *F. S.* ſaith, that the ſaid plea by him the ſaid *F.* in manner and form aforeſaid pleaded, and the matter therein contained, are good and ſufficient in the law to bar the ſaid *E.* from having his ſaid action againſt him the ſaid *F.* which ſaid plea, and the matter therein contained, he the ſaid *F.* is ready to verify; and becauſe the ſaid *E.* to the ſaid plea hath not anſwered, nor the ſame hitherto in any manner gainſaid, he the ſaid *F.* doth pray judgment, and that the ſaid *E.* may be barred from having againſt him the ſaid *F.* his action aforeſaid, &c. *Joinder.*

Judic. pro Q.

And the ſaid *A.* ſaith, that the ſaid plea of the ſaid *J.* above by replying pleaded, and the matter therein contained, are not ſufficient in the law for the ſaid *J.* to have and maintain his ſaid action againſt him the ſaid *A.* and that he hath no need, nor is he obliged by the law of the land to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and *Demurrer to a replication.*

this he is ready to verify: Wherefore for defect of a ſufficient plea in this behalf the ſaid *A.* prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action againſt him the ſaid *A.* &c.

Joinder. And the ſaid *J.* for that he has above by replying alledged ſufficient matter in the law, for him the ſaid *J.* to have and maintain his ſaid action againſt the ſaid *A.* which the ſaid *J.* is ready to verify; which matter the ſaid *A.* doth not deny, nor any ways anſwer thereto, but intirely refuſeth to admit the verifying thereof; the ſaid *J.* as before prayeth judgment, and his ſaid debt, together with his damages by occaſion of detaining that debt, to be adjudged to him, *&c.* And becauſe, *&c.*

Demurrer to a rejoinder. And the ſaid *J.* ſaith, that the ſaid plea of the ſaid *M.* above by rejoining pleaded, and the matter therein contained, are not ſufficient in the law to bar the ſaid *J.* from having his ſaid action againſt the ſaid *T.* and that he hath not need, nor is obliged by the law of the land to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this he is ready to verify: Wherefore the ſaid *J.* as before, prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.*

Joinder. And the ſaid *T.* for that the matter aforeſaid by him above by rejoining alledged (which he is ready to verify) is ſufficient in the law to bar the ſaid *J* from having his ſaid action againſt him the ſaid *T.* which ſaid matter

ter the ſaid *J.* hath not denied, nor any ways anſwered thereto, but intirely refuſeth to admit the verifying the ſame, prayeth judgment, and that the ſame *J.* may be barred from having his ſaid action againſt him, *&c.* 3 Lev. 187.

Of going to argument on demurrer.

When demurrer is joined, the plaintiff's attorney makes up the demurrer book, and delivers a copy of it on treble penny paper to the defendant's attorney, who muſt pay him for it after the rate of 4 *d. per* ſheet, beſides the duty, and alſo for entering his pleadings and warrant of attorney; then the plaintiff's attorney enters the whole proceedings on the roll, and having delivered it to the ſecondary gets a ſerjeant to move for a *Concilium*, or day for arguing the demurrer, and the ſecondary draws up a rule accordingly, which muſt be ſerved on the defendant's attorney, and the demurrer put down in the book for argument. It will be irregular to move for a *Concilium* before the paper book is delivered to defendant's attorney; and for this irregularity, court ordered cauſe to be ſtruck out of paper. *Barnes* 163.

As to delivering the paper books, *vide antea* fol. *Rule, Paſ.* 27 *Car.* 2.

As to delivering the paper-books.

The plaintiff's attorney ſhall deliver all the demurrer books to the lord chief juſtice and the reſt of the judges, and the defendant's attorney ſhall pay the plaintiff's attorney for two of the ſaid books two days at leaſt before the day appointed for arguing ſuch demurrer

and the defendant ſhall not be heard by his counſel when the cauſe comes on to be argued, unleſs the ſaid two books be accordingly paid for. *Mich.* 6 *Geo.* 2.

Where in caſes of demurrer deft.'s attorney obliged to accept notice of inquiry.

Where the defendant demurs to the declaration, his attorney ſhall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and where the defendant pleads ſuch a dilatory plea that the plaintiff is obliged to demur, the defendant's attorney ſhall be obliged to accept of notice of executing a writ of inquiry on the back of ſuch demurrer. *Trin.* 10 *Geo.* 1.

In judges books counſels names, number roll, and day of argument to be ſet down.

Per Curiam: For the future in all demurrer books delivered to the judges, let the counſels names be inſerted who ſigned the pleadings, and let the number roll, and day of argument be ſet down on the outſide of each book. *Trin.* 17 & 18 *Geo.* 2. *Barnes* 164.

Proceedings on iſſues upon Nul tiel record.

Declaration in debt on a judgment.

London, *to wit*, R. D. late of *London*, carpenter, was ſummoned to anſwer unto *L. P.* of a plea, that he render to him 62*l.* of lawful money of *Great Britain*, which he oweth him and unjuſtly detaineth, &c. and whereupon the ſaid *L.* by *J. C.* his attorney ſaith, that whereas the ſaid *L.* heretofore, that is to ſay, in *Eaſter* term in the fourth year

year of the reign of his preſent majeſty king *George* the ſecond, in his ſaid majeſty's court, before Sir *Robert Eyre*, knight, and his brethren, then his majeſty's juſtices of the bench here, at *Weſtminſter* in the county of *Middleſex*, by the conſideration of the ſaid court recovered againſt the ſaid *R.* 62*l.* which were adjudged to the ſaid *L.* in the ſaid court for his damages which he had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings to the ſaid *L.* by the ſaid *R.* then lately made, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted, as by the record and proceedings thereof now remaining in his majeſty's ſaid court here more fully and at large appeareth, which ſaid judgment ſtill remaineth in its full ſtrength, force and effect, not reverſed, vacated, annulled, diſcharged or ſatisfied; and the ſaid *L.* hath as yet obtained no ſatisfaction of the aforeſaid judgment, whereby an action hath accrued to the ſaid *L.* to demand and have of the ſaid *R.* the ſaid 62*l.* yet the ſaid *R.* although often requeſted, hath not rendered the ſaid 62*l.* or any part thereof to the ſaid *L.* but to render the ſame to him hitherto hath denied, and ſtill doth wholly deny, to the damage of the ſaid *L.* 20*l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record. *Plea* Nul tiel record.

cord of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court, before Sir *Robert Eyre*, knt. and his brethren, his majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, *&c.*

Replication. And the ſaid *L.* ſaith, that he by any thing before alledged ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith, that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record, and he prayeth, that the ſaid record may be inſpected and ſeen by the juſtices here, *&c.* And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is ſaid by the ſaid court here to the ſaid *L.* that he have the ſaid record here on The ſame day is given to the ſaid *R.* here, *&c.*

Rule for judgment on bringing record into court. On bringing the record into court on the day given, the ſecondary of courſe draws up a rule for judgment *Niſi cauſa* within four days, and at the expiration of that time the ſecondary certifies at the foot of the rule that no cauſe hath been ſhewn, after which judgment may be ſigned.

Judgment. The clerk of the judgments enters up the judgment.

The

—The plaintiff muſt bring in the record at the day he has given himſelf, or the court will not receive it.

Recovery in a former action pleaded in bar.

And the aforeſaid *J.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after making the ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, and before the day of obtaining the original writ of the ſaid *T. to wit*, in the term of St. *Michael* in the preſent——year of the reign of the now king before Sir *Robert Eyre*, knight, and his companions, juſtices of our ſaid lord the king of the bench at *Weſtminſter*, by bill, without the writ of the ſame king, and by the conſideration of the ſaid court, recovered againſt the ſame *J.* 60*l.* for his damages which he had ſuſtained as well by reaſon of the not performing the ſeveral promiſes and aſſumptions in the ſaid declaration above mentioned, as for his coſts and charges by him in his ſaid ſuit in that behalf laid out and expended, as by the record and proceſs thereof in the ſaid court of our ſaid lord the king of the bench at *Weſtminſter* fully appeareth. And the ſaid *J.* averreth, that the promiſes and aſſumptions in the ſaid record mentioned, and the promiſes and aſſumptions in the ſaid declaration above mentioned, are the ſame promiſes and aſſumptions, and not other or different; and this the ſaid *J.* is ready to verify: Whereupon he prayeth judgment, if the ſaid *T.*

ought to have or maintain his ſaid action againſt him, *&c.*

Replication, Nul tiel record.

And the aforeſaid *T.* ſaith, that he by any thing alledged by the ſaid *J.* in the above pleading ought not to be precluded from having his action aforeſaid againſt the ſaid *J.* becauſe he ſaith, that there is not any ſuch record of the ſaid recovery againſt the ſaid *J.* at the ſuit of the ſaid *T.* as he the ſaid *J.* above in pleading hath alledged; and this he is ready to verify: Whereupon he prayeth judgment, and that his ſaid damages may be adjudged to him, *&c.*

Rejoinder.

And the aforeſaid *J.* ſaith, that there is a record of the ſaid judgment as the ſaid *J.* above in pleading hath alledged; and this he is ready to verify by the ſaid record, and prayeth, that the ſaid record may be ſeen and inſpected by the juſtices here. And becauſe the ſaid record is not now had here, it is commanded the ſaid *J.* that he have here the ſaid record in (*the day*) at his peril. The ſame day is given as well to the ſaid *T.* as to the ſaid *J.* here, *&c.* At which day come here as well the ſaid *T.* as the ſaid *J.* by their ſaid attornies, and the ſaid *J.* hath not here the ſaid record, but maketh default; whereby it ſufficiently appeareth to the ſaid juſtices here, that there is not any ſuch record of the ſaid recovery, as the ſaid *J.* hath above alledged; Wherefore, *&c.* (*Judgment.*)

Day given to produce the record.

Def. fails in producing the record.

Q. If there was not here a complete iſſue upon the replication, and the rejoinder unneceſſary.

And

And the ſaid *T.* by *F. K.* his attorney co- meth and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *J.* ought not to have his aforeſaid action againſt him the ſaid *T.* thereon, becauſe he ſaith, that one *C. T.* heretofore (that is to ſay) in *Eaſter* term in the fifth year of the reign of his preſent majeſty, by an original writ impleaded the ſaid *J.* by the name of *J. H.* late of *London*, gent. in the court of the ſaid now king, before the king himſelf (the ſaid court then and ſtill being at *Weſtminſter* in the county of *Middleſex*) in a plea of treſpaſs; and the ſaid *J.* becauſe he did not appear in his ſaid majeſty's court before the ſaid king, to anſwer unto the ſaid *C.* in the aforeſaid plea, according to the law and cuſtom of this realm, was put in exigent to be outlawed in *London*; and for that reaſon afterwards, *to wit*, on *Monday* next before the feaſt of the purification of the bleſſed virgin *Mary* in the ſixth year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king before the ſaid king himſelf, was outlawed in due form of law at the ſuit of the ſaid *C.* in the ſaid plea, and ſtill remaineth outlawed, as by the record and proceedings thereof in his ſaid majeſty's court, before the king himſelf at *Weſtminſter* aforeſaid returned, and now there remaining, may more fully appear; and this he is ready to verify by the ſaid record: Wherefore he prayeth judgment, whether the ſaid *J.* ought to have his ſaid action therefore againſt him.

That the plt. is outlawed in another court.

And

Replication, Nul tiel record.

And the ſaid *J.* ſaith, that he, by any thing by the ſaid *T.* in his plea above alledged, ought not to be barred from having his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of outlawry in his ſaid majeſty's court before the king himſelf, as the ſaid *T.* by his ſaid plea hath alledged; and this he is ready to verify in ſuch manner as the court ſhall award. And the ſaid *T.* is commanded that he have the ſaid record here on the morrow of the aſcenſion of our Lord at his peril; and the ſame day is given to the ſaid *J.* here, *&c.* At which day here come as well the ſaid *J.* as the ſaid *T.* by their attornies aforeſaid; and the ſaid *T.* hath not here the ſaid record, but maketh default thereof: Wherefore, *&c.*

Day given to produce the record.

Deft. makes default.

Notice of inquiry on iſſue of Nul tiel record.

Upon an iſſue of *Nul tiel record*, notice of executing a writ of inquiry may be given upon the iſſue-book, as well as upon a joinder in demurrer. *Long* againſt *Lingwood*, *Hil.* 8 *Geo.* 2. *Barnes* 249. *Pract. Reg. C. P.* 443.

When a four day rule on iſſue of Nul tiel record *is neceſſary.*

Where the judgment upon an iſſue of *Nul tiel record* is final, the rule ſhould be, unleſs cauſe within four days, that the defendant may have that time to move in arreſt of judgment; but where the judgment is interlocutory, that reaſon fails, and a two day rule hath been held ſufficient, becauſe the defendant may move in arreſt of judgment after the inquiry executed. Where the proceeding is by original, and a general return day is given to bring in the record, the defendant ought to be called to bring in the record at the riſing of the court on that day, and if he

Difference where proceedings by original, and by bill.

he fail, the rule for judgment ſhould be, unleſs cauſe on the appearance day of that return, and the record may be brought in on that day or any other intervening day. But where the proceedings are by bill againſt an attorney, and the day given to bring in the record is a day certain, the record cannot be brought in after that day; but on that day, at the riſing of the court, the defendant ought to be called to bring in the record, and if he fail, the court will appoint the day to be inſerted in the rule for judgment *Niſi cauſa.*

Rule to ſhew cauſe why defendant ſhould not *reply* to ſeveral matters to a plea in bar to an avowry, diſcharged; becauſe no inſtance can be ſhewn of ſeveral matters replied ſince *ſtat.* 4 *An. chap.* 16. for though the words of the ſtatute are, to plead as many matters, *&c.* and *Replications*, rejoinders, *&c.* are properly pleadings, yet the courts of *Weſtminſter* have never carried their leave further than as afore-mentioned. *Barnes* 364.

Of judgments by default.

IF the defendant does not plead by the time limited by the rules of the court (for which ſee before, *fol.* *&c.*) the plaintiff may ſign his judgment with the prothonotary, in whoſe office the proceedings are entered. In debt the judgment is final, and ſigned on a double half-crown ſtamp; but in treſpaſs, treſpaſs on the caſe, *&c.* the firſt judgment is only interlocutory, and not final, till

Of entering judgment by default.

till the inquiry is returned, when you get the inquiſition ſtamped with a double half-crown ſtamp, and then the prothonotary taxes your coſts *de incremento*, which is called ſigning the final judgment.

In entering your judgment you leave about an inch margin, and begin about ten inches from the top of the roll, the declaration thus:

Judgment in debt.

London, *to wit.* *C. D.* late of *London*, merchant, was attached to anſwer *A. B.* in a plea of treſpaſs on the caſe; and whereupon, *&c. (to the end of the declaration)* And thereof he bringeth ſuit, *&c.*

Then beginning a new line, you enter the judgment in the following manner:

By Nil dicit.

And the ſaid *C. D.* by *C. H.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or precluſion of the action of the ſaid *A. B.* by which the ſaid *A. B.* remaineth thereupon undefended againſt the ſaid *C.* Therefore it is conſidered that the ſaid *A.* recover againſt the ſaid *C.* his ſaid debt, and his damages by oc-

Judgment ſigned 5 May 1767.

Day of ſigning judgment to be ſet down.

By the ſtatute 29 *Car.* 2. *c.* 3. *ſ.* 14. perpetuated by 1 *Jac.* 2. *c.* 17. *ſ.* 5. Any judge or officer of any of the courts at *Weſtminſter*, who ſhall ſign any judgment, ſhall at the time of ſigning it (without fee) ſet down the day and year of his ſo doing upon the paper-book, docket or record, which day and year ſhall be ſet down on the margin of the roll of the record where ſuch judgment ſhall be entered.

caſion

caſion of the detaining the ſaid debt to 53 *s.* by the court here adjudged to the ſaid *A. B.* by his aſſent. And the ſaid *C.* in mercy, *&c.* *Mercy.*

And the ſaid *B.* by *C. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he cannot deny the action of the ſaid *E.* nor but that he oweth to the ſaid *E.* the ſaid 10 *l.* in manner and form as the ſaid *E.* hath above declared againſt him: It is therefore conſidered that the ſaid *E.* recover againſt the ſaid *B.* his ſaid debt, and his damages by occaſion of the detaining that debt to 53 *s.* by the court here adjudged to the ſaid *E.* by his aſſent; and the ſaid *B.* in mercy, *&c.* Cognovit actionem *in debt.* *Judgment ſigned day of* 1767.

And the ſaid *T.* by *L. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he cannot deny but that the ſaid writing obligatory is the deed of him the ſaid *T.* nor but that he oweth to the ſaid *W.* the ſaid 10 *l.* in manner and form as the ſaid *W.* hath above declared againſt him: It is therefore conſidered, *&c. as before.* Cognovit actionem *in debt on a bond.*

And the ſaid *L.* by *T. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *L.* of any anſwer to be given for the ſaid *L.* to the ſaid *R.* in the plaint aforeſaid; and he ſaith nothing elſe thereupon; by which the ſaid *R.* remaineth thereupon undefended againſt the ſaid *L.* It is therefore conſidered, *&c.* *Judgment by* Non ſum informatus.

And the ſaid *C. D.* by *E. T.* his attorney cometh and defendeth the force and injury, when, Nil dicit *in caſe.*

when, &c. and ſaith nothing in bar or preclusion of the action of the ſaid *G.* by which the ſaid *G.* remaineth thereupon undefended againſt the ſaid *C.* For which the ſaid *E.* ought to recover againſt the ſaid *C.* his damages by occaſion of the premiſſes. But becauſe it is not known what damages the ſaid *G.* hath ſuſtained by occaſion of the premiſſes, therefore it is commanded to the ſheriff, that by the oath of good and lawful men of the county aforeſaid he diligently inquire what damages the ſaid *G.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon make he make appear to the juſtices of our lord the king at *Weſtminſter*, on the morrow of the holy *Trinity*, under his ſeal, and the ſeals of them by whoſe oath he ſhall make the ſaid inquiſition. As to continuance *vide* 2 *Danv. Abr.* 153. *pl.* 7. *Yel.* 97. *Noy* 120. *Cro. Eliz.* 144, 774. 11 *Co.* 6. *b. Rol. Rep.* 30, 31. *Cro. Eliz.* 75. *Sid.* 16.

Inquiry awarded.

If the action be in caſe *Sur aſſumpſit*, inſtead of ſaying [*by occaſion of the premiſſes*] ſay [*by occaſion of the not performing the promiſes and undertakings aforeſaid.*]

In treſpaſs ſay, [*by occaſion of the treſpaſs aforeſaid.*]

If in treſpaſs and aſſault, ſay [*by occaſion of the treſpaſs and aſſault aforeſaid.*]

If in treſpaſs, aſſault and impriſonment, ſay [*by occaſion of the treſpaſs, aſſault and impriſonment aforeſaid.*]

In

In covenant ſay [*by occaſion of breaking the ſaid covenant.*]

If the defendant, after having pleaded *per minas* or *per dures*, and iſſue taken thereon, is willing to confeſs the action, the entry of ſuch confeſſion is to be in this manner.

At which day here cometh as well the ſaid *A.* as the ſaid *B.* by their attornies aforeſaid, and thereupon the ſaid *B.* relinquiſhing his averment aforeſaid above by him pretended ſaith, that he cannot deny the action of the ſaid *A.* thereupon, nor but that he at the time of making the ſaid writing was of his own right at large, and made the ſaid writing to the ſaid *A.* of his mere and free will, and not for fear of threatnings, as he the ſaid *A.* hath above alledged: Therefore it is conſidered, *&c. as before.* Relicta verificatione.

If the defendant confeſs the action after *Non eſt factum* pleaded, and iſſue joined, the entry is thus:

At which day here cometh as well the ſaid *R.* as the ſaid *S.* by their attornies aforeſaid, and hereupon the ſaid *S.* relinquiſhing his averment aforeſaid above by him pretended, ſaith, that he cannot deny the ſaid action of the ſaid *R.* nor but that the ſaid writing is the deed of him the ſaid *S.* nor but that he oweth the ſaid *R.* the ſaid 100 *l.* in manner and form as the ſaid *R.* above complaineth againſt him: Therefore it is conſidered, *&c.* *The like after* Non eſt factum *pleaded.*

And the ſaid *B. C.* by *D. E.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *B.* of any anſwer Non ſum informatus *in caſe.*

ſwer for the ſaid *B.* to be given to the ſaid *E.* in the plaint aforeſaid; for which the ſaid *E.* ought to recover his damages by occaſion of the premiſſes againſt the ſaid *B.* But becauſe it is unknown what damages the ſaid *E.* hath ſuſtained by occaſion of the premiſſes, it is commanded to the ſheriff, that by the oath of twelve good and lawful men of his bailiwic he diligently inquire what damages the ſaid *E.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon take he make appear to the juſtices of our lord the king at *Weſtminſter*, in five weeks from the day of *Eaſter*, under his ſeal, and the ſeals of, *&c.*

Inquiry awarded.

The clerk of the judgments enters up the final judgment. See his duty under the head of the officers of the court, *fol.* 17.

No warrant to confeſs a judgment to be taken of a priſoner, unleſs an attorney on his behalf be preſent.

No bailiff or ſheriff's officer ſhall preſume to exact or take from any perſon, being in his cuſtody, any warrant to acknowledge a judgment but in the preſence of an attorney for the defendant, which attorney ſhall then ſubſcribe his name thereunto; which ſaid warrant ſhall be produced when the ſaid judgment ſhall be acknowledged. *Hil.* 14, 15. *Car.* 2.

No attorney ſhall enter or acknowledge, or cauſe to be entered or acknowledged, any judgment by colour of any warrant gotten from any defendant being under arreſt, otherwiſe than is aforeſaid. *Same rule.*

But

But if the defendant be an attorney, or practiſes as ſuch, 'tis ſufficient, though no attorney on his behalf be preſent. *Rep. and Caſ. of Pract. C. P.* 94. *Barnes* 37.

Aliter if defendant be an attorney.

It is not neceſſary that a warrant of attorney to confeſs a judgment in this court given by a perſon in cuſtody, be executed in the preſence of an attorney of this court; if it be in the preſence of an attorney of the court of *King's Bench* it is ſufficient. *Barnes* 44.

Warrant to confeſs a judgment in the preſence of an attorney of B. R. *is ſufficient.*

Every warrant of attorney for confeſſing a judgment in this court ſhall be read over by the perſon who is to execute the ſame, or by ſome other perſon to him before the execution thereof; and if judgment ſhall be entered up upon any ſuch warrant of attorney which ſhall not be ſo read over as aforeſaid, ſuch judgment upon any motion may be ſet aſide as irregular. *Trin.* 14, 15 *Geo.* 2.

Warrant of attorney to confeſs a judgment to be read by or to the party.

If judgment on a warrant of attorney be not entered up within a year, the plaintiff muſt apply to the court for leave to enter up the judgment, making an affidavit of the due execution of the warrant, that the debt is unſatisfied, and the defendant living. *Rep. and Caſ. of Pract. C. P.* 69. *Barnes* 270.

On warrant of a year ſtanding judgment can't be entered without leave of the court.

If a warrant of attorney to enter judgment be above a year old, and under ten years old, leave to enter judgment may be given by a treaſury rule; but if the warrant be above ten years old, the court muſt be moved for leave to enter judgment. If the warrant be under twenty years old, the common affidavit of due execution of the warrant, that the debt is unpaid and the parties living, is ſuffi-

When by a treaſury rule a judgment may be entered on an old warrant of attorney.

cient for an abſolute rule. But if the warrant be above twenty years old, the rule muſt be to ſhew cauſe, and ſerved on defendant. *Barnes* 41, 47. *Rep. and Caſ. of Pract. C. P.* 146.

Leave granted to enter judgment on an old warrant of attorney in *Mich.* term, on affidavit, that defendant was living in *Ireland*, on 18 *Sept.* preceding, as a reaſonable length of time for diſtance. *Barnes* 53, 54.

Of a ſpecial original to ſupport the judgment.

If the plaintiff has judgment, and it be not upon a verdict, his attorney muſt make out a *Præcipe* for a ſpecial original returnable on the firſt return of that term, in which the judgment (or interlocutory judgment in caſe of a writ of inquiry) is entered.

The form of a Præcipe *for a ſpecial original in caſe.*

Præcipe for a ſpecial original.

Middleſex, *to wit.* IF *L. B.* ſhall give you ſecurity to proſecute his ſuit, then put by ſureties and ſafe pledges *C. M.* late of *Weſtminſter* in the county of *Middleſex*, eſq; that he be before our juſtices at *Weſtminſter* on the morrow of *All Souls*, to ſhew, That whereas the ſaid *C.* on the 25th day of *September* in the year of our Lord 1766, at *Weſtminſter* in the ſaid county of *Middleſex*, was indebted to the ſaid *L.* in the ſum of 200 *l.* of lawful money of *Great Britain*, for the hire of divers horſes, mares and geldings of him the ſaid *L.* and for the labour and attendance of diverſe of his ſervants, and alſo for

Indebitatus aſſumpſit *for the uſe of horſes, coach, &c. and attendance of ſervants.*

for the uſe of diverſe of his coaches and chariots by him the ſaid *C.* at his ſpecial inſtance and requeſt before that time uſed, hired and had, and being ſo indebted, and the ſaid *C.* in conſideration thereof afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, took upon himſelf, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly pay the ſaid 200 *l.* to him the ſaid *L.* when he the ſaid *C.* ſhould be afterwards thereunto requeſted. *And alſo whereas* the ſaid *C.* afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, in conſideration that the ſaid *L.* had before that time, at the like ſpecial inſtance and requeſt of him the ſaid *C.* let to hire to him the ſaid *C.* diverſe other horſes, mares and geldings, and diverſe other coaches and chariots of him the ſaid *L.* and had alſo at the like ſpecial inſtance and requeſt of the ſaid *C.* before that time by diverſe of his ſervants done and performed for him the ſaid *C.* diverſe other labours and attendances, took upon himſelf, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly pay to the ſaid *L.* ſo much money, as he the ſaid *L.* had reaſonably deſerved to have for the ſame, when he the ſaid *C.* ſhould be afterwards thereunto requeſted. And he the ſaid *L.* doth aver, that he the ſaid *L.* reaſonably deſerved to have for the ſame the further ſum of 200 *l.* of like lawful money, *to wit*, at *Weſtminſter*

Quantum meruit *thereon.*

aforeſaid in the county aforeſaid, whereof the ſaid *C.* afterwards, that is to ſay, on the ſame day and year aforeſaid there had notice. *And alſo whereas* the ſaid *C.* afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, had accounted with him the ſaid *L.* touching and concerning diverſe other ſums of money by him the ſaid *C.* to him the ſaid *L.* then due and in arrear, and unpaid; and upon that account he the ſaid *C.* was found in arrear to him the ſaid *L.* in the ſum of 132 *l.* 7 *s.* of like lawful money, and being ſo found in arrear he the ſaid *C.* in conſideration thereof afterwards, *to wit*, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, took upon himſelf, and to him the ſaid *L.* then and there faithfully promiſed that he the ſaid *C.* would well and truly pay the ſaid 132 *l.* 7 *s.* to the ſaid *L.* when he the ſaid *C.* ſhould be afterwards thereunto requeſted: *Neverthelefs* the ſaid *C.* in no wiſe regarding his ſaid ſeveral promiſes and undertakings ſo made by him as aforeſaid, but contriving and fraudulently intending him the ſaid *L.* in this behalf craftily and ſubtilly to deceive and defraud, hath not paid to him the ſaid ſeveral ſums of money, or any of them or any part thereof (although to pay the ſame to him the ſaid *L.* he the ſaid *C.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted by the ſaid *L.*) but the ſaid *C.* to pay the ſame to him hath hitherto altogether refuſed, and ſtill

Inſimul computaſſet.

Breach.

ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *L.* 200*l.* as he ſaith,

R. R. *Returnable on the morrow of All Souls.*

This *Præcipe* muſt be carried to the curſitor of the county in which the action is laid, on or before the eſſoin-day of the ſubſequent term, purſuant to the following order.

Original to be beſpoke on or before the eſſoin day of the ſucceeding term.

No curſitor ſhall make, or permit to be made, within his reſpective office and diviſion, any original writs whatſoever of any return paſt, unleſs he ſhall receive the inſtructions for making thereof within the term wherein the ſaid writs are to be returnable, or at fartheſt *on or before* the eſſoin-day of the next ſucceeding term, without ſpecial warrant from the lord chancellor or lord keeper of the great ſeal of *England*, or maſter of the rolls for the time being. *Lord* Clarendon's *orders in chancery.*

Fine to the king.

If the debt demanded, or damages laid, exceed 40*l.* the plaintiff pays a fine to the king in proportion to ſuch debt or damages, as follows:

	l.	*s.*	*d.*
From 40*l.* to 100 marks ——	0	6	8
From 100 marks to 100*l.* ——	0	10	0
From 100*l.* to 200 marks ——	0	13	4
From 133*l.* 6*s.* 8*d.* to 166*l.* 13*s.* 4*d.*	0	16	8
From 166*l.* 13*s.* 4*d.* to 200*l.* —	1	0	0
And for every 100 marks more	0	6	8
And for every 100*l.* more ——	0	10	0

Of returning the original.

When the curſitor has made out the original, the plaintiff's attorney returns it of courſe thus;

Pledges to proſecute { *John Doe*, *Richard Roe.*

The within named *C. M.* hath nothing in any bailiwic whereby he can be * attached,

The anſwer of

Robert Darling, Eſq; *James Eſdail*, Eſq; } Sheriff.

And then he files it with the *Cuſtos brevium.*

Warrant of attorney.

He muſt alſo file a warrant of attorney for the plaintiff, and one for the defendant, if he appeared by attorney.

Of writs of inquiry.

Notice of executing writ of inquiry.

WHEN you have ſigned your interlocutory judgment, you are to give the defendant notice of executing the writ of inquiry; and in ſome inſtances you may give notice of executing the writ of inquiry before you have ſigned interlocutory judgment, as in caſes of demurrers and iſſues on *Nul tiel record*, as appears *fol.* 228.

Where 8 *days notice of executing writ of inquiry in* London *or* Middleſex.

In *London* or *Middleſex* (the defendant dwelling within forty miles of *London*) there muſt be eight days notice given of executing a writ of inquiry, excluſive of the day whereon the notice is given. *Mich.* 1654.

Where fourteen days.

But if the defendant lives above forty miles from *London*, and the inquiry is to be execu-

* *Vide antea fol.* 125-6. the difference between attached and ſummoned.

ted

ted in *London* or *Middleſex*, there muſt be fourteen days notice, excluſive of the day of the notice. *Same rule.* This rule holds good although the defendant be an attorney of the court. *Barnes* 265. and notwithſtanding *Stat.* 14 *Geo.* 2. chap. 17. See *ante* 196.

Eight days notice in the country.

And eight days notice, excluſive of the day of the notice, muſt be given of executing writs of inquiry in the country. *Same rule.*

Where a term's notice.

If there have been no proceedings for twelve months after judgment, there muſt be a term's notice given of executing a writ inquiry of damages; and ſuch notice muſt be given before the eſſoin-day of the term. *Vide antea fol.* 197. *Rule, Paſ.* 13 *Geo.* 2.

Where plaintiff concludes ad patriam, gives notice of trial, and defendant don't join iſſue, notice of inquiry to be from the time notice of trial was given.

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of his pleading (purſuant to the rule of *Trinity* 2 *Geo.* 1. *antea fol.* 197.) if the defendant does not join iſſue on ſuch pleading before the rule is out, the defendant's attorney ſhall, after judgment obtained, be obliged to accept notice of executing a writ of inquiry from the time that the notice of trial was given on the back of ſuch pleading, as aforeſaid. *Hilary* 6 *Geo.* 1.

Where notice of inquiry may be given on demurrer or joinder in demurrer.

Videa antea fol. 227. Where defendant ſhall be obliged to accept notice of executing a writ of inquiry on the back of a joinder in demurrer or demurrer; and *fol.* 234. where he ſhall be obliged to accept the like notice on the back of an iſſue of *Nul tiel record.*

And on iſſue of Nul tiel record.

Where notice to be delivered

Where the plaintiff has entered an appearance for the defendant, purſuant to the act of parliament, left a declaration for him in the

to defendant, or left at his laſt place of abode.

office, given him proper notice thereof, and ſigned judgment for want of a plea, he may give notice of executing his writ of inquiry either by delivering the notice in writing to ſuch defendant, or leaving the ſame for him at his laſt or moſt uſual place of abode, which ſhall be a ſufficient notice to ſuch defendant. *Mich.* 1 *Geo.* 2.

Notice of inquiry not to be given to defendant if his attorney be known.

Notice of trial or of (*a*) executing a writ of inquiry given to a defendant, when his attorney is known, is not good notice; but when the defendant's attorney is not known, notice of trial or of executing a writ of inquiry may be given to the defendant. *Rep. and Caſ. of Pract. C. P.* 62. *Pract. Reg. C. P.* 275.

The form of the notice.

Common Pleas.

John Denn
againſt
Richard Fenn.

SIR,

The form of a notice of inquiry.

Be pleaſed to take notice, that a writ of inquiry of damages in this cauſe will be executed on *Monday* the fourteenth day of *May* inſtant, between the hours of ten and twelve in the forenoon, at the *Court Houſe* at *Weſtminſter*.

Your humble ſervant,
L. R.
Attorney for the plt.

To Mr. N. C.
Attorney for deft.

4th May 1778.

Notice

(*a*) *Barnes* 311.

Notice of executing a writ of inquiry at eleven of the clock in the forenoon is good, if the writ be executed before twelve. *Pract. Reg. C. P.* 446. *Barnes* 302. *As to the time.*

Notice of executing a writ of inquiry between the hours of eleven and two is bad, it ſhould be confined to two hours at moſt, as between ten and twelve. *Rep. and Caſ. of Pract. C. P.* 113. *Pract. Reg. C. P.* 445, 446. *Barnes* 296.

Notice of executing a writ of inquiry at ten in the forenoon, or ſo ſoon after as the ſheriff can attend, is bad for incertainty. *Rep. and Caſ. of Pract. C. P.* 99. *Pract. Reg. C. P.* 134. *Barnes* 295.

The notice ſhould be certain as to the place, *viz.* the houſe, ſtreet, *&c.* A notice of executing a writ of inquiry at the ſign of the *Three Tons* in *Brook-ſtreet, Middleſex*, was held bad, not ſaying where that *Brook-ſtreet* was, *viz.* in *Holborn*, there being three *Brook-ſtreets* in *Middleſex*. Lemark *v.* Newman, Trin. 10 Geo. 2. Pract. Reg. C. P. 447. Barnes 299, 300. Com. Rep. 551. *And place.*

Notice of inquiry may be given in the country to the country attorney. *Barnes* 305. *Vide antea* 196. *Notice to country attorney.*

Notice for executing a writ of inquiry before a judge at the aſſizes ought to be for the aſſizes generally, and not for any particular day, and need not be entered with the marſhal, it not being within the rule concerning records of *Niſi prius*, the judge being no more than an aſſiſtant to the ſheriff to whom the writ was directed. *Of executing inquiry before a judge of aſſiſe.*

Promiſſory note, &c. muſt be proved on writ of inquiry.

If the action be on a promiſſory note or bill of exchange, the letting judgment go by default is not ſuch an admittance of the note or bill, as to render the proof of them unneceſſary; on the contrary they muſt be proved on executing the writ of inquiry. *Barnes* 233. but *Gould* J. C. P. upon judgment by default, in an action upon a promiſory note of hand, or bill of exchange, the ſum due thereon, is admitted, and need not be proved upon the execution of the writ of inquiry, 3 *Wilſ. Rep. C. B.* 165. *H.* 11 *Geo.* 3. *A. D.* 1771. *Anon.*

Irregularities cured by defence.

Irregularity in the notice, *&c.* is cured by the defendant's making a defence on executing the writ of inquiry. *Barnes* 233, 412.

After defence made on executing a writ of inquiry, defendant cannot take advantage of miſtake in declaration. 2 *Wilſ.* 380.

Inquiries ſet aſide.

Inquiries have been ſet aſide for exceſſive damages, and where the ſheriff has admitted improper evidence to leſſen damages.

Inquiſition taken before *two* under ſheriffs *extraordinary*, ſet aſide. 2 *Wilſ.* 378.

Motion to ſet aſide inquiſition may be made on the ſixth day in term, after inquiry returnable, *if final judgment be not before ſigned.* 2 *Wilſ.* 379.

A writ of inquiry of damages.

Writ of inquiry.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the

ſheriff of *Middleſex*, greeting. Whereas *B. C.* late of *S.* in your county, gentleman, was attached to be in our court before our juſtices at *Weſtminſter*, to anſwer *D. E.* in a plea, wherefore whereas the ſaid *B.* on the tenth day of *March* in the year of our reign, at *Weſtminſter* in the county of *Middleſex*, &c. [*as in the declaration to*] to the damage of the ſaid *D.* of fifty pounds, as he ſaith; and it was in ſuch manner proceeded in our ſaid court, that the ſaid *D.* ought to recover againſt the ſaid *B.* his damages, by occaſion of the not performing the ſaid promiſes and undertakings (*or by occaſion of the premiſſes, by occaſion of the ſaid treſpaſs, treſpaſs and aſſault, breach of the covenant, or the like, as the action is.*) But becauſe it is unknown what damages the ſaid *D.* has ſuſtained by occaſion of the premiſſes, we command you, that by the oath of twelve good and lawful men of your county (*if in* London, *ſay, of your bailiwic*) you diligently inquire what damages the ſaid *D.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and the inquiſition which you ſhall make thereof make appear to our juſtices at *Weſtminſter*, on the morrow of the aſcenſion of our Lord, under your ſeal, and the ſeals of them by whoſe oath you ſhall make that inquiſition; and have you there the names of them by whoſe oath you ſhall make that inquiſition, and this writ. Witneſs

neſs * Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the ſeventh year of our reign.

Cooke.

If the action be at the ſuit of an attorney of the court, the writ of inquiry is in this form:

The form when at the ſuit of an attorney.

GEORGE the third, *&c.* To, *&c.* Whereas *C. V.* was attached by our writ of privilege iſſuing out of our court here, to be before our juſtices at *Weſtminſter*, to anſwer *S. O.* gentleman, one of the attornies of our court of the bench, according to the liberties and privileges of the ſame court, for ſuch attornies and other miniſters of the ſame bench, time out of mind uſed and approved in the ſame; for that, *to wit*, That whereas the ſaid *S.* on the day of, *&c.* *(ſetting forth the declaration to)* to the damage of the ſaid *C.* of twenty pounds, as is ſaid; and it was in ſuch manner proceeded in our ſaid court, That, *&c.* (*as before, making the writ returnable on a day certain, as on* Monday *next after fifteen days of* Eaſter, *and not on a general return day.*)

---

* A writ of inquiry in this court was teſted *Philip* lord *Hardwick*, inſtead of Sir *John Willes*; on writ of error brought, it was held this was no good cauſe of error, and judgment was affirmed. *Andr.* 74. 2 *Str.* 1080. Whether writ be not ſufficient without adding day or year, after the name of the chief juſtice, in the *teſte*. See *Barnes* 425, 426.

If

If an attorney be defendant, the form is thus: *When against an attorney.*

GEORGE the third, *&c.* To, *&c.* Whereas *D. W.* by *W. T.* his attorney, came into our court before our juſtices at *Weſtminſter*, and exhibited to our ſaid juſtices his bill againſt *T. P.* gentleman, one of the attornies of our court of the bench, preſent in our ſaid court, in his proper perſon, for that, *&c.* (*as before*) and the writ to be returnable on a day certain.

Writs of inquiry are to be ſigned by the prothonotary before they are ſealed.

If your witneſſes will not voluntarily attend, you may have a *Subpœna* for them in this form:

Subpœna ad teſtif. *on a writ of inquiry.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command you, and each of you, firmly injoining, that all other matters laid aſide, and notwithſtanding any excuſe, you be in your proper perſons before the ſheriff of *Middleſex*, at the *Court-Houſe* at *Weſtminſter*, on the day of at eleven of the clock in the forenoon of the ſame day, to teſtify the truth in a certain matter of controverſy depending in our court before our juſtices of the bench, between *K. J.* plaintiff, and *S. H.* defendant, in a plea of treſpaſs on the caſe; and this you are not to omit under the penalty of one hundred pounds. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*,

Weſtminſter, the twelfth day of *May* in the ſeventh year of our reign.

Cooke.

When the writ is ſigned and ſealed, you make out tickets for the witneſſes to the following effect, *viz.*

Mr. ———

By virtue of a writ of *Subpæna* to you directed, and herewith ſhewn unto you, you are perſonally to be and appear before —— our ſheriff of the county of —— or his under ſheriff on —— the —— day of —— at ten o'clock in the forenoon of the ſame day, at the houſe of —— the ſign of the *King's Arms*, in —— in the ſaid county, then and there to teſtify the truth, according to your knowledge, upon a writ of inquiry of damages, to be then and there executed in a certain cauſe now depending between ——— plaintiff and ——— defendant, in a plea of —— on the part of the plaintiff. And this you are not to omit upon pain of 100*l.* Dated the —— day of —— in the eighteenth year of the reign of our ſovereign lord *George* the third, by the grace of God of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, and ſo forth, and in the year of our Lord 1778.

By the court.

When the writ of inquiry is returned by the ſheriff, you get the inquiſition ſtamped with a double half-crown ſtamp, and then carry

carry it to the prothonotary to tax your coſts, and after that you deliver it to the clerk of the judgments to enter up final judgment on the roll.

On ſigning judgment, the inquiſition to be left with the clerk of the judgments.

Where final judgments ſhall be ſigned on inquiſitions upon writs of inquiry, the inquiſition ſhall be immediately left with the clerk of the judgments of the reſpective prothonotary, and ſhall not afterwards be taken out of the office without leave of the court. *Trin.* 29 *Car.* 2. *Trin.* 13 *Geo.* 2.

If inquiry not executed according to notice, deft. to have coſts.

Where notice is given of a writ of inquiry, and not countermanded in time, the defendant ſhall be intitled to coſts from the plaintiff, for not executing ſuch writ of inquiry, in the ſame manner as a defendant, by the courſe of the court, is now intitled to coſts from a plaintiff who does not proceed to trial of an iſſue joined after notice given. *Trin.* 13 *Geo.* 2.

Of bringing in rolls and docketing the rolls.

Attorney on receiving roll from prothonotary's office to ſign the book.

EVERY attorney that ſhall receive any roll, either plea or common, from the reſpective prothonotaries of this court, ſhall ſign and ſet his name to ſuch prothonotary's book, from whom he ſhall receive the ſame; and no prothonotary ſhall deliver any roll but to the proper hand of ſome known attorney or clerk of their reſpective offices. *Paſ.* 34 *Car.* 2.

No

Rolls not to be carried into the country.

No attorney ſhall carry any rolls of this court into the country. *Paſ.* 12 *Jac.* 1. *Mich.* 1649. *Mich.* 1654. *Paſ.* 34 *Car.* 2.

When attornies are to bring in their rolls.

Eaſter *term.*

Every attorney of this court, that ſhall receive any roll or rolls as aforeſaid, plea or common, of any *Eaſter* term, ſhall bring the ſame into the office from whence he received it on or before the firſt day of the next *Trinity term.*

Trinity.

And the rolls received of any *Trinity* term ſhall be brought into ſuch office on or before the feaſt-day of St. *Michael* the archangel next enſuing the ſaid term.

Michaelmas.

And the rolls received of any *Michaelmas* term ſhall be brought into ſuch office on or before the ſixth day of *January* next enſuing.

Hilary.

And the rolls received of any *Hilary* term ſhall be brought into ſuch office by the ſpace of four days before the feaſt of *Eaſter* next after the ſaid term. *Paſch.* 34 *Car.* 2.

Garet paper.

The prothonotaries, on delivering the common rolls to the clerk of the warrants, are alſo to deliver a note of the rolls that are wanting; the ſame note to be ſubſcribed by the clerk of the warrants, and redelivered to the prothonotary; and the clerk of the warrants, on delivering over the common rolls to the clerk of the eſſoins, is to take the like note from the clerk of the eſſoins of the rolls wanting. *Mich.* 1654.

No poſt rolls to be delivered to attornies.

The clerk of the eſſoins ſhall not deliver out any poſt rolls, or other rolls of this court, to any attorney or clerk of this court, but to the reſpective prothonotaries and other officers

cers of this court, that have a right to ſuch rolls. *Paſch.* 34 *Car.* 2.

When the officers are to carry in the rolls to the clerk of the eſſoins.

The ſeveral and reſpective *officers* of this court ſhall deliver in all their rolls of *Trinity*, *Michaelmas*, and *Hilary* term, to the clerk of the eſſoins, before the eſſoin-day of the ſeveral terms following; and their rolls of *Eaſter* term upon or before the firſt day of *Trinity* term following; and the officer, who ſhall not bring or ſend in all his rolls of the ſaid ſeveral terms at the times aforeſaid, ſhall pay to the clerk of the eſſoins, for every roll brought in after 12*d.* 6 *Jac.* 1. *Paſ.* 5 *W.* & *M.*

The plea rolls of every term ſhall be brought in to the clerk of the eſſoins three weeks after the end of the term following, and, in default thereof, there ſhall be likewiſe paid to the clerk of the eſſoins, for every plea roll brought in after, 12*d.* *Paſ.* 5 *W.* & *M.*

The clerk of the eſſoins to lay before the court an account of what rolls are wanting.

The clerk of the eſſoins ſhall a fortnight within every term lay before the court an account of what rolls are wanting, that ought to have been brought in according to the ſaid rules, together with the attornies names who took them out of the ſaid offices, that this court may proceed as they ſhall think fit againſt ſuch perſons as ſhall not have brought in their rolls according to the ſaid rules. *Trin.* 2 *Geo.* 1.

Of docketing judgments.

On carrying in your rolls to the prothonotary you are to docket them on the common docket, in the manner as you'll ſee others, thus:

Not informed in debt.

Middleſex. *Weſt* for *Burton*
Parker for *Taylor*, } Roll 225.

Says nothing in Caſe.

M. Same for ſame,
Same for ſame, } Same.

Forejudger.

M. Same for *Wace*,
againſt
Wilſon an attorney, } 342.

Execution by default.

M. Same for ſame,
againſt
Vanbrugh. adminiſt. } Same.

The prothonotary delivers the rolls over to the clerk of the warrants, who is to inſpect the ſame, and eſtreat all fines and amerciaments againſt ſheriffs and others that he ſhall find amongſt the ſaid rolls, and then to deliver them to the clerk of the eſſoins, who dockets them, purſuant to the ſtatute of 4 & 5 of *W.* & *M.* *c.* 20. then binds them up, and carries them over to the treaſury at *Weſtminſter*.

Of executions.

Ca. ſa. 1. A *Capias ad ſatisfaciendum* is a writ which iſſues after a judgment; and by this writ the ſheriff is commanded to take the

the body of the defendant, and have him in court at the return of the writ to ſatisfy the plaintiff.

This writ was by the common law only in treſpaſſes, *Quare vi armis*, being direct and wilful wrongs; but now by the ſtatute 25 *Ed.* 3. may iſſue in other caſes. It is deemed a full execution, and in the law ſufficient for the whole debt; *corpus humanum non recipit æſtimationem*; and where the body is taken on a *Capias ad ſatisfaciendum*, no other execution can be had againſt the defendant's lands or goods. But in caſe the defendant dies in execution, by the ſtatute 21 *Jac.* 1. *c.* 24. the plaintiff, his executors or adminiſtrators, may lawfully ſue forth execution againſt the lands and tenements, goods and chattels of the defendant ſo dying in execution, in like manner as if the deceaſed defendant had never been taken in execution: In this caſe the judgment muſt be revived by *Scire facias*.

If deft. dies in execution, p't. may have execution againſt the lands or goods.

If two be bound jointly and ſeverally to me, and I ſue them jointly, I may have a *Capias* againſt them both, and the death or eſcape of one, ſhall not diſcharge the other; but I cannot have a *Capias* againſt the one, and another kind of execution againſt the other, becauſe though they be two ſeveral perſons, yet they make but one debtor, when I ſue them jointly; but if I ſue them ſeverally, I may ſever them in their kinds of execution; though if once any ſatisfaction be had of one, or againſt the ſheriff for an eſcape

of one, the reſt may be relieved upon an *Audita querela.* Hob. 59.

Fi. fa.

2. A *Fieri facias* is a writ which commands the ſheriff to levy the debt or damages and coſts recovered by a judgment of the goods of the defendant, and to have the ſame in court at the return of the writ to ſatisfy the plaintiff.

Where executed after defendant's death.

If after this writ is ſued out, and before it is executed, the defendant dies, it may be executed on his goods in the hands of his executors or adminiſtrators.

3 Danv. 319. pl. 8.

If only part of the debt or damages be levied, the plaintiff may have a *Ca. ſa.* or *Elegit* for the reſidue. *Hob.* 57, 58.

If only part levied, Ca ſa. *or* Elegit *for reſidue.*

After *Fi. fa.* executed, and thereby part of the debt and coſts levied; plaintiff before return irregularly ſued out a *Teſt. Fi. Fa.* and under it levied the reſidue. Court of *C. P.* ſet aſide the *Teſt.* and ordered reſtitution and coſts. *Barnes* 213.

Where *Fi. fa.* not returned, continuances entered on the roll, not ſufficient, to ſupport *Ca. ſa.* on old warrant of attorney, not revived, and *Ca. ſa.* ſet aſide with coſts, and *Superſedeas* awarded to diſcharge defendant.

Defendant arreſted by *Ca. ſa.* pays the money to the ſheriff's officer; at the return, ſheriff returns that *Fi. fa.* againſt the goods of the plaintiff in *Ca. ſa.* at ſuit of defendant therein was delivered to him, and that he levied the money in *Fi. fa.* out of the caſh received on *Ca. ſa.* return held inſufficient, and ſheriff ordered to pay money levied

levied under *Ca. ſa.* to plaintiff therein, deducting poundage. *Barnes* 214.

3. *Elegit*; this writ is given by the ſtatute of *W.* 2. 13 *Ed.* 1. *c.* 18. And by this writ the ſheriff is to deliver to the plaintiff all the chattels of the defendant, except his oxen and the beaſts of his plow, and one half of his land, to hold until the debt or damages, and coſts recovered, be ſatisfied, upon a reaſonable price or extent. Elegit.

If on an *Elegit* only goods be levied, and theſe not ſufficient to ſatisfy the judgment, the plaintiff may have a *Capias* for the reſidue, it being in effect but a *Fieri facias.* Hob. 58. *If only part levied.* Ca. ſa. *for the reſt.*

If I take out a *Ca. ſa.* or *Fi. fa.* and they take no effect, I may have one of them after another, or an *Elegit* after both, if they fail. *Hob.* 57.

If the judgment be on a bond with a penalty, the plaintiff may, as far as the penalty will extend, levy the poundage payable to the ſheriff, and all incident charges of the execution. *Barnes.* 198.

If execution be not ſued out within a year, the judgment muſt be revived by *Scire facias.* *Barnes* 197. 206. but ſee 210. *Execution to be ſued out within the year, or elſe a* Sci. fa.

But on a rule to ſhew cauſe, why a *Fieri facias* ſhould not be ſet aſide, the judgment being above a year old, and not revived by *Scire facias*, nor any continuances of a *Fieri facias* entered on record; the plaintiff having, before cauſe ſhewn, entered the continuances, and producing intervening writs of *Fieri facias* *Where helped by continuances on the rolls,* &c.

cias to warrant the ſame, the rule was diſcharged.

Of Teſtatum *Executions.*

In caſe of a *Teſtatum fieri facics* or *Ca ſa.* the court will not go into a nice inquiry when the *Fieri facias*, or *Ca. ſa.* into the original county to warrant the *Teſtatum*, was ſued out; it is ſufficient if the firſt *Fieri facias*, or *Ca. ſa.* returned be produced. *Barnes* 211.

Of execution pending debt on the judgment.

If the plaintiff hath brought an action of debt on the judgment, he cannot take out an execution of that judgment, until he hath diſcontinued the action of debt. *Barnes* 208.

After execution executed the court cannot inquire into the Quantum *of debt and coſts.*

It hath been held, that after execution executed, though the judgment be for a penalty, the court cannot refer to the prothonotary to inquire what is due for principal, intereſt, and coſts; and what is levied in order to make reſtitution of the ſurplus, without conſent of the plaintiff; but the defendant muſt apply for relief to a court of equity. *Barnes* 204.

Capias ad ſatisfaciendum *in debt.*

Ca. ſa. *in debt.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriffs of *London*, greeting. We command you, that ye take *W. B.* late of *London*, cabinet-maker, otherwiſe called *W. B.* late of the pariſh of in the county of *Middleſex*, cabinet-maker, if he be found in your bailiwic, and keep him ſafely, ſo that you may have

	s.	*d.*
Signing	0	4
Seal	0	7
Duty	2	0
	2	11

have his body before our juſtices at *Weſtminſter* on the morrow of the holy *Trinity*, to ſatisfy *R. R.* as well of a certain debt of fifty pounds, which the ſaid *R.* in our court before our juſtices at *Weſtminſter* recovered againſt him, as of ſixty-three ſhillings, which in our ſaid court were adjudged to the ſaid *R.* for his damages, which he had by occaſion of the detaining that debt, whereof the ſaid *W.* is convicted; and have there this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the ſeventh year of our reign.

To ſatisfy *R. R.* of fifty pounds, which were adjudged to the ſaid *R.* in our ſaid court, before our juſtices at *Weſtminſter*, for his damages which he ſuſtained by occaſion of a certain treſpaſs on the caſe done to the ſaid *R.* by the ſaid *W.* at *S.* in your county, whereof he is convicted; and have you there this writ. Witneſs, *&c.* *Treſpaſs on the caſe.*

For his damages which he had by occaſion of the not performing certain promiſes and undertakings made to the ſaid *R.* by the ſaid *W.* at *W.* in your county; whereof, *&c.* *Treſpaſs on the caſe* ſur aſſumpſit.

For his damages which he had by occaſion of the not performing a covenant made between the ſaid *W.* and the ſaid *R.* according to the force, form and effect of certain indentures [*or articles*] made between them; whereof, *&c.* *Breach of covenant.*

For his damages which he ſuſtained by occaſion of a certain treſpaſs and aſſault, made on the ſaid *R.* by the ſaid *W.* with force and *Treſpaſs and aſſault.*

arms, and againſt our peace, at *W.* in your county; whereof, *&c.*

Treſpaſs. For his damages which he ſuſtained by occaſion of a certain treſpaſs done to the ſaid *R.* by the ſaid *W.* with force and arms, and againſt our peace, at *L.* in your county; whereof, *&c.*

In ejectment for damages. For his damages which he ſuſtained by occaſion of a certain treſpaſs and ejectment of a farm done to the ſaid *R.* by the ſaid *W.* with force and arms, and againſt our peace, at *L.* in your county; whereof, *&c.*

Replevin. For his damages which he had by occaſion of the taking and unjuſtly detaining the cattle of the ſaid *R.* at *W.* in a certain place called the *H.* in your county; whereof, *&c.*

Words. For his damages which he had by occaſion of the ſpeaking and publiſhing certain falſe and ſcandalous words by the ſaid *W.* of the ſaid *R.* at *B.* in your county; whereof, *&c.*

Teſtatum Ca. ſa'. If you make out a *Teſtatum Ca. ſa.* you are to write as before, to [whereof he is convicted *inclusive*] and after thoſe words you are to proceed thus; and whereupon our ſheriff of *N.* [*the ſheriff to whom the firſt* Ca. ſa. *was directed*] ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *W.* was not found in his bailiwic, whereas it is teſtified in our ſaid court, that he lurketh and ſecreteth himſelf in your county; and have there, *&c.*

s. d.
Signing 0 8

Ca. ſa. *oſi. r a* Sci. fa'. If it be after a *Sci. fa.* then after the words [whereof he is convicted] ſay, and whereupon it is conſidered in our ſaid court, that the aforeſaid *R.* have his execution againſt the

the aforeſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* and have there, *&c.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *S.* greeting. We command you, that you take *V. C.* late of, *&c.* if he be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the octave of the holy *Trinity* to ſatisfy *J. F.* adminiſtrator of the goods and chattels which were of *B. F.* during the minority of *W. F.* executor of the teſtament and laſt will of the ſaid *B.* late executor of the teſtament and laſt will of *W. B.* deceaſed, as well of a certain debt of ſixty pounds, which the aforeſaid *B.* lately in our court before our juſtices at *Weſtminſter* recovered againſt the ſaid *V.* as of fifteen pounds, which in our ſaid court were adjudged to the ſaid *B.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *V.* is convicted; and whereupon it is conſidered in our ſaid court, that the aforeſaid *J.* have his execution againſt the ſaid *V.* of the debt and damages aforeſaid, by the default of the ſaid *V.* And whereupon our ſheriffs of our city of *Exeter* have returned to our juſtices at *Weſtminſter* at a certain day now paſt, that the aforeſaid *V.* is not found in their bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *V.* lurketh and ſecreteth

A Teſtatum Ca. ſa. *after a* Sci. fa. *by an adminiſt.* durante minoritate executoris *of an executor.*

Sci. fa'.

Teſtatum.

creteth himſelf in your county; and have there this writ. Witneſs, *&c.*

Teſtatum Ca. ſa. *for the reſidue after a* Fi. fa. *in debt.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Lincoln*, greeting. We command you, that you take *W. G.* late of *S.* in the county of *Leiceſter*, gentleman, otherwiſe called *W. G.* of *S.* in the county of *Leiceſter*, gentlemen, if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* in fifteen days from the day of Saint *Martin*, to ſatisfy *W. R.* gentleman, of eighteen pounds nine ſhillings and one penny, parcel of a certain debt and damages, *to wit*, of a certain debt of forty pounds, which the ſaid *W. R.* in our court before our juſtices at *Weſtminſter* recovered againſt him, and of forty ſhillings which in your ſaid court were adjudged to the ſaid *W. R.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *W. G.* is convicted, of which ſaid debt and damages twenty-three pounds ten ſhillings and eleven pence, other parcel, by virtue of our writ thereupon were lately made and levied of the goods and chattles of the ſaid *W. G.* And whereupon our ſheriff of *N.* ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *W. G.* is not found in his bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *W. G.* lieth hid, wandereth and ſculketh in your

Teſtatum.

your county; and have there this writ. Witneſs, *&c.*

GEORGE the third, *&c.* To, *&c.* greeting. We command you, that you take *W. A.* late of, *&c.* and *W. S.* late of, *&c.* if they be found in your bailiwic, ſo that you may have their bodies before our juſtices at *Weſtminſter*, on *to wit*, to the ſaid *W. A.* to ſatisfy *R. B.* of twenty pounds, and the ſaid *W. S.* to ſatisfy the ſaid *R. B.* of forty pounds, for his ſeveral damages which the ſaid *R.* ſuſtained by occaſion of a certain aſſault, beating, wounding and ill treatment made on the ſaid *R.* by the ſaid *W.* and *W.* and againſt our peace with force and arms, at *B.* in your county, as is found by a certain inquiſition of the country of your county taken between them; and alſo the ſaid *W.* and *W.* to ſatisfy the ſaid *R.* of ſeventeen pounds which were adjudged to the ſaid *R.* in our ſaid court, for his coſts and charges which he ſuſtained by occaſion of the premiſes; whereof they are convicted; and have there, *&c.* Ca. ſa. *againſt two where ſeveral damages by inquiry in treſpaſs and aſſault.*

To ſatisfy *C. D.* late of, *&c.* eſq; of nine pounds and ten ſhillings, which in our court before our juſtices at *Weſtminſter*, by the diſcretion of the ſaid juſtices, according to the form of the ſtatute in that caſe made and provided, were adjudged to the ſaid *C.* for his coſts and charges which he ſuſtained, for that the ſaid *E. T.* did not proſecute his writ by him the ſaid *E.* obtained in our ſaid court againſt the ſaid *C.* in a certain plea of debt upon *Upon a nonſuit in debt.*

upon demand for forty pounds, whereof the ſaid *E.* is convicted; and there, *&c.*

If in caſe, ſay, —— in a certain plea of treſpaſs on the caſe.

In treſpaſs, ——in a certain plea of treſpaſs.

In ejectment,——in a certain plea of treſpaſs and ejectment of farm; *et ſic de cæteris.*

A Teſtatum Ca. ſa. *of privilege for an attorney againſt an attorney, in debt.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *L.* greeting. Attach *L. R.* gentleman, one of the attornies of our court of the bench, otherwiſe called *L. R.* of, *&c.* ſo that you may have him before our juſtices at *Weſtminſter* on *Wedneſday* next after the morrow of *All Souls*, to ſatisfy *J. S.* gentleman, another attorney of our court of the bench, as well of a certain debt of ſixty pounds, which the ſaid *J.* in our court before our juſtices at *Weſtminſter* recovered againſt him, as of fourteen pounds and ten ſhillings which were adjudged to the ſaid *J.* in our ſaid court, for his damages which he had by occaſion of the detaining that debt, whereof the ſaid *L.* is convicted; and whereupon our ſheriff of *M.* ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *L.* was not found in his bailiwic, whereas it was teſtified in our ſaid court, that he lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, *&c.*

Teſtatum.

GEORGE

A Teſtatum Ca. ſa. *by a ſurviving plaintiff againſt an attorney, in debt.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriffs of *N.* greeting. Attach *W. T.* gentleman, one of the attornies of our court of the bench, otherwiſe called *W. T.* of, *&c.* ſo that you may have him before our juſtices at *Weſtminſter* on next after to ſatisfy *V. D.* as well of a certain debt of five hundred pounds, which the ſaid *V. D.* and one *T. J.* now deceaſed, in our court before our juſtices at *Weſtminſter* recovered againſt him, as of nine pounds which in our ſaid court were adjudged to the ſaid *V.* and *T.* for their damages which they had by occaſion of the detaining that debt, whereof the ſaid *W.* is convicted; and whereupon it is conſidered in our ſaid court, that he the ſaid *V.* have execution againſt the ſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* And whereupon our ſheriffs of *London* ſent to our juſtices at *Weſtminſter* on a certain day now paſt, that the ſaid *W.* was not found in their bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *W.* lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, *&c.*

Sci. fa.

Teſtatum.

Teſtatum Ca. ſa. *againſt bail after* Nulla Bona *returned on a* Fi. fa'. *Recital of* Fi. fa.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Surry*, greeting. Whereas we lately commanded our ſheriff of *Middleſex*, that he ſhould cauſe to be made of the lands and chattels

chattels in his bailiwic of *T. S.* late of, *&c.* thirty-eight pounds; and of the lands and chattels in his bailiwic of *F. F.* late of, *&c.* other thirty-eight pounds; and of the lands and chattels in his bailiwic of *T. P.* late of, *&c.* other thirty-eight pounds. Which said ſeveral ſums of thirty-eight pounds each of them the ſaid *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, ſeverally acknowledged themſelves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the uſe and behoof of the ſaid *E. P.* and *W. F.* to be levied; which ſaid recognizance in that ſame term at *Weſtminſter* aforeſaid is inrolled, as by the ſaid record and proceedings thereon in our ſame court before our ſaid juſtices at *Weſtminſter* aforeſaid remaining manifeſtly appears; and that he ſhould have that money before our ſaid juſtices at *Weſtminſter* from the day of *Eaſter* in fifteen days laſt paſt, to render to the ſaid *E.* and *W.* for the ſeveral ſums of money aforeſaid, according to the form of the ſaid recognizance whereof they are convicted; and whereupon it is conſidered in our ſaid court, that the ſaid *E.* and *W.* ſhould have their execution againſt the aforeſaid *T. S. F.* and *T. P.* of the ſaid ſeveral ſums of thirty-eight pounds by them in form aforeſaid acknowledged, by the default of them the ſaid *T. S. F.* and *T. P.* And whereupon our ſheriff of *Middleſex* at that day ſent to our ſaid juſtices at *Weſtminſter*,

Return.

minſter, that the ſaid *T. S. F.* and *T. P.* had not, nor had any one of them any lands or chattels in his bailiwic, whereof he was able to make the ſaid ſeveral ſums of 38*l.* 38*l.* and 38*l.* or any part thereof: We therefore command you, that you take the ſaid *T. S. F.* and *T. P.* if they may be found in your bailiwic, and keep them ſafely, ſo that you may have their bodies before our juſtices at *Weſtminſter* on the morrow of the Holy *Trinity*, to ſatisfy the aforeſaid *E.* and *W.* of the ſaid ſeveral ſums of thirty-eight pounds, according to the form of the ſaid recognizance, whereof they are convicted; and whereupon our ſaid ſheriff of *Middleſex* ſent to our ſaid juſtices at *Weſtminſter* from the day of *Eaſter* in five weeks laſt paſt, that the aforeſaid *T. S. F.* and *T. P.* were not, nor was any one of them found in his bailiwic, whereas it is teſtified in our ſaid court, that they lurk and ſecrete themſelves in your county; and have there, *&c.* Teſtatum.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *D.* greeting. Whereas we lately by our writ commanded our ſheriff of *M.* that of the goods and chattels in his bailiwic, which were of *S. V.* late of, *&c.* at the time of his death, in the hands of *V. C.* gentleman, late of, *&c.* executor of the teſtament and laſt will of the ſaid *S.* he ſhould cauſe to be made as well a certain debt of five hundred pounds, which *W. W.* in our court before our juſtices at Teſtatum Ca. ſa. *againſt an executor after a* Devaſtavit *and* Nul aBona *returned.*

at *Weſtminſter* recovered againſt the ſaid *V. C.* as alſo eighteen pounds which in our ſaid court were adjudged to the ſaid *W.* for his damages which he had by occaſion of the detaining that debt, if the ſaid *V.* had ſo much in his hands to be adminiſtered; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *V.* and ſhould have that money before our juſtices at *Weſtminſter* on the morrow of the Purification of the bleſſed *Mary* laſt paſt, to render to the ſaid *W.* for his debt and damages aforeſaid, whereof he is convicted; and our ſaid ſheriff of *M.* at that day ſent to our ſaid juſtices at *Weſtminſter*, that the ſaid *V. C.* had before the coming of the ſaid writ ſold and waſted diverſe goods and chattels which were of the ſaid *S. V.* at the time of his death, to the value of the debt and damages aforeſaid, and had converted the money ariſing therefrom to his own proper uſe, ſo that he could not levy, or cauſe to be made the ſaid debt and damages of the goods and chattels of the ſaid *S. V.* And the ſaid *V. C.* had no goods or chattels of his own proper goods and chattels in his bailiwic, whereof he could cauſe to be made the ſaid damages, or any part thereof, as by that writ he was commanded; therefore we command you, that you take the ſaid *V. C.* if he may be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the morrow of the Aſcenſion of our Lord, to ſatisfy the ſaid *W.* of the debt and damages aforeſaid; and whereupon our

ſheriff

ſheriff of *M.* from the day of *Eaſter* in fifteen days laſt paſt ſent to our juſtices at *Weſtminſter*, that the ſaid *V. C.* was not found in his bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *V. C.* lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, *&c.* Teſtatum.

GEORGE the third, *&c.* to the ſheriff of *K.* greeting. Whereas we lately by our writ commanded you, that of the goods and chattels in your bailiwic, which were of *N. R.* deceaſed, at the time of his death, being in the hands of *M. R.* late of *N.* in your county, widow, executrix of the teſtament and laſt will of the ſaid *N.* to be adminiſter'd, you ſhall cauſe to be made thirty-four pounds, which in our court, before our juſtices at *Weſtminſter*, were adjudged to *R. B.* for his damages which he ſuſtained by occaſion of the not performing certain promiſes and undertakings made to the ſaid *R.* by the ſaid *N.* in his life-time at *M.* in your county, if the ſaid *M.* had ſo much thereof in her hands to be adminiſtered; and if ſhe had not, then fourteen pounds and ten ſhillings of the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *M.* and ſhould have that money before our juſtices at *Weſtminſter* from the day of the Holy *Trinity* in three weeks laſt paſt, to render to the ſaid *R.* for his damages aforeſaid, whereof ſhe is convicted; and you at that day ſent to our ſaid juſtices at *Weſtminſter*, that the ſaid *M.* had no goods nor chattels in your bailiwic which Ca. ſa. *for damages againſt an executrix after* Nulla bona propria *returned.*

were of the ſaid *N.* at the time of his death, whereof you could cauſe to be made the ſaid damages, or any penny thereof, nor any of her own proper goods or chattels in your ſaid bailiwic, whereof you could cauſe to be made the ſaid fourteen pounds and ten ſhillings of damages aforeſaid, or any penny thereof; we therefore command you, that you take the ſaid *M.* if ſhe may be found in your bailiwic, and keep her ſafely, ſo that you may have her body before our juſtices at *Weſtminſter* from the day of to ſatisfy the ſaid *R.* of the ſaid fourteen pounds and ten ſhillings of damages aforeſaid; and have there this writ. Witneſs, *&c.*

Ca. ſa. *in caſe at the ſuit of an executrix.*

GEORGE the third, *&c.* To the ſheriffs of *London*, greeting. We command you, that you take *M. G.* late of *L.* widow, if ſhe ſhall be found in your bailiwic, and her ſafely keep, ſo that you may have her body before our juſtices at *Weſtminſter* to ſatisfy *E. K.* executrix of the teſtament and laſt will of *G. K.* her late huſband deceaſed, of one hundred and ſeventeen pounds and ten ſhillings, which to the ſaid *E.* in our court before our juſtices at *Weſtminſter*, were adjudged for the damages of the ſaid *G.* which he ſuſtained by reaſon of not performing certain promiſes and undertakings made by the ſaid *M.* to the ſaid *G.* in his life-time at *L.* aforeſaid in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, whereof the ſaid *M.* is convicted; and whereupon it was conſidered in our ſame court, that the damages

Sci. fa. *on* Stat. 8 & 9 W. 3. c.

damages aforeſaid by him the ſaid *G.* ſuſtained by occaſion of not performing the promiſes and undertakings aforeſaid, ſhould be aſſeſſed and adjudged to the ſaid *E.* according to the form of the ſtatute in that caſe made and provided, by default. Witneſs, *&c.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Lincoln*, greeting. We command you, that you cauſe to be made of the goods and chattels in your bailiwic of *B. C.* late of, *&c.* as well a certain debt of 20*l.* which *D. E.* in our court, before our juſtices at *Weſtminſter* recovered againſt him, as ſixty ſhillings which were adjudged to the ſaid *D.* in our ſaid court, for his damages which he had by occaſion of the detaining that debt; and have that money before our juſtices at *Weſtminſter* on the morrow of the Aſcenſion of our Lord, to render to the ſaid *D.* for his debt and damages aforeſaid, whereof the ſaid *B.* is convicted; and have there this writ. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the day of, *&c.* A Fieri facias *in debt.*

For varying the *Fieri facias* according to the nature of the action, the directions before given, *fol.* *&c.* for making out the *Capias ad ſatisfaciendum*, will ſerve.

In a *Teſtatum fieri facias*, after the words [*whereof he is convicted*] ſay, and whereupon our ſheriff of *N.* ſent to our juſtices at a cer- Teſtatum Fi. fa.

tain day now paſt, that the ſaid *B.* hath no goods or chattels in his bailiwic, whereof he could cauſe to be made or levied the ſaid debt and damages, or any part thereof: Whereas it is teſtified in our ſaid court, that the ſaid *B.* hath ſufficient goods and chattels in your county whereof the ſaid debt and damages may be cauſed to be made and levied; and have there this writ. Witneſs, *&c.*

Fi. fa. *againſt an adminiſtratrix.*

GEORGE the third, *&c.* To, *&c.* greeting. We command you, that of the goods and chattels in your bailiwic, which were of *S. H.* deceaſed, at the time of his death, in the hands of *E. H.* late of, *&c.* widow, adminiſtratrix of the goods and chattels which were of the ſaid *S. H.* to be adminiſtered, you cauſe to be made as well a certain debt of thirty pounds, which *R. F.* gentleman, in our court, before our juſtices at *Weſtminſter* recovered againſt her, as ten pounds which in our ſaid court were adjudged to the ſaid *R.* for his damages which he had by occaſion of the detaining that debt, if the ſaid *E.* hath ſo much goods and chattels which were of the aforeſaid *S.* at the time of his death in her hands to be adminiſtered; and if ſhe hath not, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *E.* And have that money before our juſtices at *Weſtminſter* on the morrow of the Holy *Trinity*, to render to the ſaid *R.* for the debt and damages aforeſaid whereof ſhe is convicted; and have there this writ. Witneſs, *&c.*

GEORGE

GEORGE the third, *&c.* To, *&c.* greeting. We command you, that of the goods and chattels in your bailiwic of *J. M.* late of, *&c.* and *E.* his wife, lately called, *&c.* you cauſe to be made twenty and five pounds and ten ſhillings which in our court, before our juſtices at *Weſtminſter*, were adjudged to *J. J.* and *R. R.* for their damages which they ſuſtained by occaſion of the not performing certain promiſes and undertakings to the ſaid *J.* and *R.* by the ſaid *E.* when ſhe was ſole, made at *B.* in the county of *S.* And have that money before our juſtices at *Weſtminſter* from the day of the Holy *Trinity* in three weeks, to render to the ſaid *J.* and *R.* for their damages aforeſaid, whereof the ſaid *E.* is convicted; and whereupon it is conſidered in our ſaid court, that the ſaid *J.* and *R.* have their execution againſt the ſaid *J. M.* and *E.* of the damages aforeſaid, by the default of the ſaid *J. M.* and *E.* And whereupon our ſheriff of *S.* at a certain day now paſt, ſent to our juſtices at *Weſtminſter*, that the ſaid *J. M.* and *E.* had no goods or chattels in his bailiwick, whereof the ſaid damages could be made, whereas it is teſtified in our ſaid court, that the ſaid *J. M.* and *E.* have ſufficient goods and chattels in your county, whereof the ſaid damages may be made; and have there this writ. Witneſs, *&c.*

Teſtatum Fi. fa. *after* Sci. fa. *in caſe on* aſſumpſit *upon a recovery againſt the wife while ſole.*

Sci. fa.

Teſtatum.

GEORGE the third, *&c.* To, *&c.* We command you, that of the goods and chattels of *W. C.* late of, *&c.* otherwiſe called, *&c.* in your bailiwic, you cauſe to be made as well

Fi. fa. *on a judgment by a* feme *executrix while ſole, whereupon execution*

is awarded on a Sci. fa. *at the ſuit of the huſband and wife.*

well a certain debt of one hundred and ſixty pounds, which *E. W.* widow, executrix of the teſtament and laſt will of *S. W.* deceaſed, in our court, before our juſtices at *Weſtminſter* recovered againſt him, as ſixty ſhillings, which to the ſaid *E.* in our ſaid court were adjudged for her damages, which ſhe had by occaſion of the detaining that debt; and have that money before our juſtices at *Weſtminſter* on the octave of the Purification of the bleſſed Virgin *Mary*, to render to *R. W.* whom the ſaid *E.* married after the ſaid judgment was given, and to the ſaid *E.* for the debt and damages aforeſaid, whereof the ſaid *W.* is convicted; and whereupon in our ſaid court before our juſtices at *Weſtminſter* it is conſidered that the ſaid *R.* and *E.* have execution againſt the ſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* And have there this writ. Witneſs, *&c.*

Sci. fa.'

A Fieri facias *againſt bail after* Sci. fa.'

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you cauſe to be made of the lands and chattels in your bailiwic of *T. S.* late, *&c.* gentleman, thirty-eight pounds; and of the lands and chattels in your bailiwic of *F. F.* late, *&c.* ſmith, other thirty-eight pounds; and of the lands and chattels in your bailiwic of *T. P.* late of, *&c.* other thirty-eight pounds. Which ſaid ſeveral ſums of thirty-eight pounds each of them the ſaid *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the

the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, ſeverally acknowledged themſelves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the uſe and behoof of the ſaid *E. P.* and *W. F.* to be levied; which ſaid recognizance in that ſame term at *Weſtminſter* aforeſaid is inrolled, as by the ſaid record and proceedings thereon in our ſaid court before our juſtices aforeſaid remaining manifeſtly appeareth; and have that money before our ſaid juſtices at *Weſtminſter* from the ſaid day of *Eaſter* in fifteen days, to render to the ſaid *E.* and *W.* for the debt aforeſaid, according to the form of the ſaid recognizance, whereof they are convicted; and whereupon it is conſidered in our ſaid court, that the ſaid *E.* and *W.* have execution againſt the aforeſaid *T. S. F.* and *T. P.* of the ſaid ſeveral ſums of thirty-eight pounds by them in form aforeſaid acknowledged, by the default of them the ſaid *T. S. F.* and *T. P.* And have there this writ. Witneſs, *&c.* Sci. fa.

And hereupon the ſaid [*plaintiff*] prayeth the writ of our lord the king to be directed to the ſheriff of the county aforeſaid, to levy the ſaid hundred pounds of the goods and chattels of the ſaid [*defendant*] for the damages aforeſaid. And it is granted to him returnable here [*the return*] at which day comes here the ſaid [*plaintiff*] by his attorney aforeſaid. And the ſheriff hath not ſent the ſaid writ; therefore let another writ be *Award of* Fi. fa. *and continuances.*

made to him in form aforeſaid, *&c.* returnable here [*the return*] at which day [*ut ſupra.*]

Fi. fa. *in debt after* Sci fa. *for executors on judgment recovered by teſtator.*

GEORGE the third, *&c.* To the ſheriff of *B.* greeting. We command you, that of the goods and chattels of *J. B.* late of *C. W.* in your county, innholder, otherwiſe called, *&c.* you cauſe to be levied as well a certain debt of 590 *l.* which *J. D.* in our court before our juſtices at *Weſtminſter* recovered againſt him, as 50 *s.* which to the ſaid *J. D.* in our ſaid court were adjudged for his damages which he had ſuſtained by reaſon of detaining that debt. And have you there that money before our juſtices at *Weſtminſter* from the day of St. *Michael* in three weeks, to render to *W. C.* and *T. B.* executors of the teſtament and laſt will of the ſaid *J. D.* for the debt and damages aforeſaid. And whereupon it is conſidered in our ſaid court, that the aforeſaid *W.* and *T.* have execution againſt the ſaid *J. B.* of the debt and damages aforeſaid, by the default of the ſaid *J B.* whereof he is convicted; and have you there this writ. Witneſs, *&c.*

The firſt *Fieri facias* muſt be directed to the ſheriff of the county where the action was laid; and on a return of *Nulla bona* you may have execution into any other county you ſhall think proper.

Elegit *in debt.*

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *E. F.* lately in our court be-

fore our juſtices at *Weſtminſter*, by the conſideration of the ſaid court, recovered againſt *B. C.* late of, *&c.* as well a certain debt of fifty pounds, as ten ſhillings, which in our ſaid court were adjudged to the ſaid *E.* for his damages which he had by occaſion of the detaining that debt, whereof the ſaid *B.* is convicted. The ſaid *E.* afterwards came into our ſaid court, and by the ſtatute in that caſe made and provided choſe to have delivered to him all the goods and chattels of the ſaid *B.* except his oxen and the beaſts of his plow, and alſo a moiety of all his lands and tenements in your bailiwic, to hold to him the goods and chattels aforeſaid, as his own proper goods and chattels; and alſo to hold the ſaid moiety as his freehold to him and his aſſigns, according to the form of the ſaid ſtatute, until the ſaid debt and damages ſhall be thereof levied; and therefore we command you, that all the ſaid goods and chattels of the ſaid *B.* except the oxen and beaſts of his plow, and alſo a moiety of all his lands and tenements in your bailiwic, whereof the ſaid *B.* on the octave of St. *Hilary* in the

year of our reign, on which day the ſaid judgment was given, or at any time after, was ſeiſed, you cauſe to be delivered by a reaſonable price and extent, to hold to him the ſaid goods and chattels as his own proper goods and chattels; and to hold the ſaid moiety as his freehold to him and his aſſigns, according to the form of the ſaid ſtatute, until the debt and damages aforeſaid ſhall be thereof levied; and in what manner you ſhall

execute

execute this writ make appear to our juſtices at *Weſtminſter*, on the morrow of *All Souls*, under your ſeal, and the ſeals of them by whoſe oath you ſhall make the ſaid extent and appraiſement; and have there this writ. Witneſs, *&c.*

Elegit *in treſpaſs.*

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *L. R.* lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court, recovered againſt *H. H.* late of, *&c.* thirty-five pounds, which in our ſaid court were adjudged to the ſaid *L.* for his damages, which he had by occaſion of a certain treſpaſs done to the ſaid *L.* by the ſaid *H.* with force and arms againſt our peace at *W.* in your county, whereof the ſaid *H.* is convicted. The ſaid *L.* afterwards came into our court, *&c.* [*as before, uſing the word* damages *inſtead of* debt and damages.]

Elegit *after a* Sci. fa.'

GEORGE the third, *&c.* To, *&c.* greeting. Whereas lately in our court before our juſtices at *Weſtminſter* it was conſidered that *E. S.* have execution againſt *H. S.* late of, *&c.* otherwiſe called, *&c.* by the default of the ſaid *H. S.* as well of a certain debt of twenty pounds, which the ſaid *E.* in our court before our juſtices at *Weſtminſter* recovered againſt the ſaid *H.* as of fifty ſhillings, which in our ſaid court were adjudged to the ſaid *E.* for his damages, which he had by occaſion of detaining that debt, whereof the ſaid *H.* is convicted. The ſaid *E.* afterwards came, *&c.* *as before.*

GEORGE

GEORGE the third, *&c.* To the ſheriff of *Berks*, greeting. Whereas *E. K.* executrix of the teſtament and laſt will of *G. K.* her late huſband, deceaſed, lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *G. M.* late of *London*, widow, one hundred and ſeventeen pounds and ten ſhillings, which in our ſame court before our juſtices at *Weſtminſter* aforeſaid were adjudged to the ſaid *E.* according to the form of the ſtatute in that caſe lately made and provided, by the default of the ſaid *M.* for the damages of the ſaid *G.* which he had ſuſtained by occaſion of not performing certain promiſes and undertakings made by the ſaid *M.* to the ſaid *G.* in his life-time, whereof the ſaid *M.* is convicted. And the ſaid *E.* afterwards came into our ſame court, and by the ſtatute in ſuch caſe made and provided choſe to have delivered to her all the goods and chattels of the ſaid *M.* except the oxen and beaſts of her plow. And likewiſe a moiety of all her lands and tenements in your bailiwic, to hold to her the ſaid *E.* the goods and chattels aforeſaid as her own proper goods and chattels, and alſo to hold the ſaid moiety of the ſaid lands and tenements as her own freehold, to her the ſaid *E.* and her aſſigns according to the form of the ſtatute aforeſaid, until ſhe hath levied the damages aforeſaid. And therefore we command you, that without delay you do deliver to the ſaid *E.* by a reaſonable price and extent, all the goods and chattels of the ſaid *M.* except the oxen and beaſts of her

Elegit *on a judgment by* Sci. fa. quare damna aſſideri non debent poſt mortem querentis port. per executricem.

Stat. 8 & 9 W. 3. c.

her plow. And in like manner the moiety of her lands and tenements in your bailiwic, of which the ſaid *M.* was ſeized on the octave of Saint *Hilary* in the ſeventh year of our reign, on which day judgment was thereof given, or at any time afterwards, to hold to her the ſaid *E.* and her aſſigns according to the form of the ſtatute aforeſaid, until ſhe ſhall have levied thereof the damages aforeſaid. And in what manner you ſhall execute this our writ make manifeſt to our juſtices at *Weſtminſter* aforeſaid, on the morrow of *All Souls*, under your ſeal, and the ſeals of them by whoſe oath you ſhall make the extent and appraiſement thereof. And have you there this writ. Witneſs, *&c.*

May have ſeveral Elegits.

A man may award on the roll *Elegits* into as many counties as he pleaſes, and execute all or any at his pleaſure; but it is ſaid, if he awards an *Elegit* into one county, extends the lands upon the writ, and afterwards files it, he is barred, and cannot ſue out an *Elegit* into any other county.

Where by inquiſition on an *Elegit* it is found that the plaintiff was ſeiſed of the lands at the time the judgment was given, upon an ejectment (which muſt be) brought to recover the poſſeſſion, the plaintiff need only give in evidence the copy of the judgment, *Elegit* and inquiſition thereupon filed, and is not bound to prove the party ſeiſed at the time of the judgment; and if he was not ſeiſed, it muſt be proved by the other ſide.

Of

Of PROCEEDINGS *for and againſt* Attornies.

WHERE an attorney is plaintiff, the firſt proceſs is an attachment of privilege, which is in the following form:

GEORGE the third, *&c.* To, *&c.* greeting. Attach *T. R.* ſo that you may have him before our juſtices at *Weſtminſter* on *Saturday* next after the morrow of *All Souls*, to anſwer *S. B.* gent. one of the attornies of our court of the bench, according to the liberties and privileges of the ſame court for ſuch attornies and other miniſters of the ſame bench from time out of mind uſed and approved in the ſame, of a plea of treſpaſs [*as the action is*] And have you there this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Attachment for an attorney. Liber. Intrat. 220. k. V. Stat. 13 Car. 2. ſtat. 2. c. 2. ſ. 4.

An attorney ſuing by attachment of privilege and nonſuited, may be taken in execution for the coſts on a *Ca. Sa.* returnable on a *general* return. 3 *Wilſ.* 58.

If the attachment requires bail you muſt mark the ſum ſworn to on the back, thus: —— Affidavit for 42 *l.* —— And alſo the day it is ſued out.

You muſt make out a *Præcipe*, containing the plaintiff's and defendant's names, not exceeding four in the whole, with the return of the

Præcipe *to be left with the prothonotary at the time of*

ſigning the writ.

the writ, day of ſigning, and the agent's or attorney's name, who ſues out the ſame; this *Præcipe* you muſt leave with the prothonotary, who without fee or reward is to enter the ſame on a remembrance roll, to be kept in his office for that purpoſe; and he is not to ſign (*a*) any attachment of privilege unleſs ſuch *Præcipe* be left in his office at the time of ſigning thereof. *Hil.* 11 *Geo.* 2.

The form of the Præcipe.

Suffolk. Attachment of privilege for *S. B.* gentleman, one of the attornies, *&c.* againſt *T. R.* Debt.

R. R. Agent, *Ret.* Saturday *next after*
7 *Oct.* 1767. *the morrow of* All Souls.

Affidavit for 42 *l.*

You pay nothing to the prothonotary for ſigning this writ, and only one penny for the ſeal.

Of appearing putting in bail thereto.

If the attachment requires only a common appearance, a copy muſt be ſerved with a notice, as in *fol.* and the appearance muſt be entered with the prothonotary who ſigned the writ, and if it requires bail, his clerk of the dockets prepares the bail-piece or recognizance, and attends a judge or the

(*a*) But the writ is to be firſt marked by the clerk of the warrants, for which nothing is paid, unleſs plaintiff is in arrear for termages.

court,

court, when the ſame is entered into, and the bail juſtify, or freſh bail is added, in the ſame manner as the filacer does on meſne proceſs by original.

The declaration at the ſuit of an attorney begins in this manner:

In the Common Pleas.

Eaſter *term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* *P. B.* late of, *&c.* was attached by a writ of our lord the king of privilege, iſſuing out of the court here to anſwer *L. R.* gentleman, one of the attornies of the court of our lord the king of the bench here, according to the liberties and privileges of the ſame court, for ſuch attornies and other miniſters of the ſame bench time out of mind uſed and approved in the ſame, of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *L.* in his proper perſon complaineth, that whereas the ſaid *P.* on the nineteenth day of *December* in the year of our Lord one thouſand ſeven hundred and thirty-eight, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, was indebted to the ſaid *L.* in thirty pounds of lawful money of *Great Britain*, for work and labour as an attorney and ſolicitor before that time done and performed by the ſaid *L.* upon the retainer, and at the ſpecial inſtance and requeſt of the ſaid *P.* in and about the proſecuting, defending and ſoliciting diverſe cauſes,

Declaration by an attorney for fees and diſburſements.

ſes, ſuits and buſineſſes, and for money laid out, expended and paid by the ſaid *L.* at the like ſpecial inſtance and requeſt of the ſaid *P.* in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes, and for money due to the ſaid *L.* for his fees due, and of right payable to him in that reſpect; and being ſo indebted, he the ſaid *P.* in conſideration thereof, afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *L.* that he the ſaid *P.* would pay to the ſaid *L.* the ſaid ſum of money when he ſhould be thereunto requeſted. *And whereas* the ſaid *P.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, in conſideration that the ſaid *L.* upon the retainer of the ſaid *P.* and at his ſpecial inſtance and requeſt, had before that time done and performed other work and labour as an attorney and ſolicitor in and about other cauſes, ſuits and buſineſſes, and laid out, expended and paid other money in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes laſt mentioned, undertook, and then and there faithfully promiſed the ſaid *L.* that he the ſaid *P.* would pay to the ſaid *L.* ſo much money as he reaſonably deſerved to have for his laſt mentioned work and labour; and ſo much money as he had laid out, expended and paid in and about the proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits and buſineſſes, and ſo much money as was due

Quantum meruit *thereon.*

due to the ſaid *L.* for his fees due, and of right payable to him in that reſpect, when he the ſaid *P.* ſhould be thereunto requeſted. And the ſaid *L.* averreth, that he reaſonably deſerved of the ſaid *P.* for his ſaid laſt mentioned work and labour, other thirty pounds of like lawful money, and that he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits, and buſineſſes, other thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the ſaid *L.* for his fees, due and of right payable to him in that reſpect, *to wit*, at the pariſh aforeſaid in the county aforeſaid, whereof the ſaid *P.* afterwards, that is to ſay, on the ſame day and year aforeſaid, there had notice. *And whereas alſo* the aforeſaid *P.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, was indebted to the ſaid *L.* in fourteen pounds of like lawful money, for the like ſum of money by the ſaid *L.* at the ſpecial inſtance and requeſt of the ſaid *P.* before that time expended, laid out, diſburſed and paid; and being ſo indebted, the ſaid *P.* afterwards, *to wit*, on the ſame day and year at the pariſh aforeſaid in the county aforeſaid, in conſideration thereof undertook, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *P.* the ſaid fourteen pounds to the ſaid *L.* when he ſhould be thereunto requeſted, would well and truly pay and content; *Yet* the ſaid *P.* in no wiſe regarding his ſaid ſeveral promiſes and undertakings

Indeb. aſſump *for money laid out.*

Breach.

dertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *L.* in this respect, hath not paid to the said *L.* the said several sums of money, or any of them, or any part thereof (although the said *P.* afterwards, *to wit*, on the thirtieth day of *December* in the same year, at the parish aforesaid in the county aforesaid, was requested by the said *L.* so to do) but has hitherto refused, and still doth refuse to pay the same to the said *L.* to the damage of the said *L.* of thirty pounds; and thereof he bringeth suit, *&c.*

(*a*) Pledges for prosecuting { *John Doe*, and *Richard Roe.*

Mr. *Rayner*, in his readings on stat. 2 *Geo.* II. chap. 23. sect. 23. hath given the profession a lecture on an action for fees, *&c.* See *Rayn. Read.* p. 62 to 102, including the previous steps necessary in regard to delivering the bill, before the commencement of the suit.

If an attorney be defendant, a bill must be prepared in the following form, according to the nature of the action.

(*a*) It hath been determined that *pledges* need not be put into the declaration by attachment of privilege. *Barnes* 163. but see 2 *Wilf. Rep. C. B.* 142, 143, which seems *contra*.

In

In the Common Pleas.

Of Eaſter *term in the ſeventeenth year of the reign of king* George *the third.*

To the juſtices of our lord the king of the bench.

Middleſex, *to wit,* R. R. gentleman, adminiſtrator of all and ſingular the goods and chattels, and credits of *R. F.* clerk deceaſed, at the time of his death, who died inteſtate, by *J. C.* his attorney complaineth of *T. J.* gentleman, one of the attornies of the court of our now lord the king of the bench here preſent here in court in his proper perſon, for that, whereas the ſaid *T.* in the life-time of the ſaid *R. F. to wit,* on the ninth day of *April* in the year of our Lord 1767, at *Weſtminſter,* in the county of *Middleſex* aforeſaid, was indebted to the ſaid *R. F.* in his life-time in 250*l.* of lawful money of *Great Britain,* for ſo much money by the ſaid *T.* to the uſe of the ſaid *R. F.* before that time had and received; and being ſo indebted the ſaid *T.* afterwards, *to wit,* on the ſame day and year at *Weſtminſter* aforeſaid in the county aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *R. F.* in his life, to pay him the ſaid ſum of money when he ſhould be requeſted to pay the ſame; *yet* the aforeſaid *T.* not at all regarding his promiſe and undertaking aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive

Bill againſt at attorney at the ſuit of an adminiſtrator.

Indeb. aſſump. *for money had and received in life-time of inteſtate.*

Breach.

ceive and defraud the ſaid *R. F.* in his life-time, and the ſaid *R. R.* ſince the death of the ſaid *R. F.* hath not yet paid the aforeſaid ſum of money, or any part thereof, to the ſaid *R. F.* in his life-time, or to the ſaid *R. R.* ſince the death of the ſaid *R. F.* (to which ſaid *R. R.* ſince the death of the ſaid *R. F.* *to wit*, on the 16th day of *June* in the year of our Lord 1767, at *Weſtminſter* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods, chattels and credits which were the goods, chattels and credits of the ſaid *R. F.* at the time of his death, by *William*, by Divine Providence archbiſhop of *Canterbury*, primate of all *England* and metropolitan, was committed) although the aforeſaid *T.* in the life-time of the ſaid *R. F.* by him the ſaid *R. F.* and after the death of him the ſaid *R. F.* by the aforeſaid *R. R.* *to wit*, on the 17th day of *June* in the year of our Lord 1767, aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted ſo to do; but he hath abſolutely refuſed to pay the ſame to the ſaid *R. F.* and ſince the death of the ſaid *R. F.* hath, and ſtill doth refuſe to pay the ſame to the ſaid *R. R.* to the damage of the ſaid *R. R.* of 300*l.* And thereupon he prayeth relief, *&c.* And the ſaid *R. R.* bringeth here into court the letters of adminiſtration aforeſaid, to him as aforeſaid granted, which teſtify the granting of the adminiſtration aforeſaid to the ſaid *R. R.* in form aforeſaid,

Adminiſtration committed.

Profert.

aforeſaid, bearing date the day and year in that reſpect above mentioned, and ſo forth.

Pledges for proſecuting, *to wit*, { *John Doe*, and *Rich. Roe.*

Bill againſt an attorney and declaration thereon, amended by ſtriking out words. *Barnes* 24. See id. 26.

In the Common Pleas.

Hilary *term in the ſeventeenth year of the reign of king* George *the third.*

To the juſtices of our lord the king of the bench.

Middleſex, *to wit*, *J. T.* by *E. B.* his attorney, complaineth of *J. H.* gent. one of the attornies of the court of our now lord the king of the bench here preſent here in court in his proper perſon, for that on the 12th day of *November* in the year of our Lord 1767, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, in conſideration that the ſaid *J. T.* at the requeſt of the ſaid *J. H.* then and there delivered to the ſaid *J. H.* a gold watch of the ſaid *J. T.* and the ſaid *J. H.* then and there received the ſame gold watch of the ſaid *J. T.* he the ſaid *J. H.* undertook, and then and there faithfully promiſed the ſaid *J. T.* to

Bill againſt an attorney on a promiſe to deliver back a gold watch, or pay 14 *guineas for it, by a certain day.*

deliver back the ſaid gold watch to the ſaid *J. T.* or to pay the ſum of 14*l.* 14*s.* to the ſaid *J. T.* for the ſaid gold watch, on or before the firſt day of *December* then next enſuing; *yet* the ſaid *J. H.* not regarding his ſaid promiſe and undertaking, but deviſing and fraudulently intending to deceive and defraud the ſaid *J. T.* in this behalf, hath not yet delivered back the ſaid watch to the ſaid *J. T.* nor paid him the ſaid 14*l.* 14*s.* nor any part thereof (although the ſaid *J. H.* afterwards, *to wit*, on the firſt day of *December* in the year aforeſaid, and often afterwards at the pariſh aforeſaid in the county aforeſaid, was requeſted by the ſaid *J. T.* ſo to do) but hath hitherto refuſed, and ſtill doth refuſe, ſo to do.

Breach.

And whereas the ſaid *J. H.* on the third day of *June* in the year of our Lord 1767, at the pariſh aforeſaid in the county aforeſaid, made his note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year laſt mentioned, by which note the ſaid *J. H.* promiſed to pay to the ſaid *J. T.* or his order, the ſum of 3*l.* 5*s.* on demand, for value received; by reaſon whereof, and alſo by force of the ſtatute in ſuch caſes made and provided, the ſaid *J. H.* became liable to pay the ſaid *J. T.* the ſaid 3*l.* 5*s.* according to the tenor and effect of the ſaid note. And being ſo liable the ſaid *J. H.* in conſideration thereof, afterwards, *to wit*, on the day and year laſt mentioned, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. T.* to pay him

On a promiſſory note drawn by defendant and payable to plaintiff.

him the ſaid 3*l.* 5*s.* according to the tenor and effect of the ſaid note. *And alſo whereas* the ſaid *J. H.* afterwards, *to wit*, on the 10th day of *January* in the year of our Lord 1767, at the pariſh aforeſaid in the county aforeſaid, was indebted to the ſaid *J. T.* in the ſum of 20*l.* of lawful money of *Great Britain*, for diverſe goods, wares and merchandizes before that time ſold and delivered by the ſaid *J. T.* to the ſaid *J. H.* at his requeſt; and being ſo indebted the ſaid *J. H.* in conſideration thereof afterwards, *to wit*, on the day and year laſt above mentioned, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. T.* to pay him the ſaid 20*l.* when he the ſaid *J. H.* ſhould be thereunto requeſted. *And alſo whereas* afterwards, *to wit*, on the day and year laſt above mentioned, at the pariſh aforeſaid in the county aforeſaid, in conſideration that the ſaid *J. T.* had before that time ſold and delivered diverſe other goods, wares and merchandizes to the ſaid *J. H.* at his requeſt, he the ſaid *J. H.* undertook, and then and there promiſed the ſaid *J. T.* to pay him ſo much money for the ſaid goods, wares and merchandizes laſt above mentioned, as the ſame at the time of the ſale and delivery thereof were reaſonably worth when he the ſaid *J. H.* ſhould be thereunto requeſted. And the ſaid *J. T.* in fact ſaith, that the ſaid goods, wares and merchandizes laſt above mentioned, were at the time of the ſale and delivery thereof reaſonably worth other 20*l.* of like lawful money, *to wit*, at

Indebitatus aſſumpſit *for goods ſold and delivered.*

Quantum valebant *thereon.*

the pariſh aforeſaid in the county aforeſaid, whereof the ſaid *J. H.* then and there had notice: *Neverthelefs* the ſaid *J. H.* not regarding his ſaid three ſeveral promiſes and undertakings laſt above mentioned, but deviſing and fraudulently intending to deceive and defraud the ſaid *J. T.* in this behalf, hath not yet paid the ſaid ſeveral ſums of money, in the ſaid three laſt promiſes and undertakings mentioned, nor any part thereof, to the ſaid *J. T.* (although the ſaid *J. H.* afterwards, *to wit*, upon the ſame day and year, and often afterwards, at the pariſh aforeſaid, in the county aforeſaid, was requeſted by the ſaid *J. T.* ſo to do) but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J. T.* of 40*l.* And thereupon he prayeth relief, *&c.*

Breach.

Pledges for proſecuting { *John Doe*, *Richard Roe.*

No bill to be filed till entered on record.

No bill ſhall be filed againſt an officer, attorney, clerk or miniſter of the court, to be called in court, in order to a forejudger, until the bill be actually entered on record, and a number roll actually put to the bill. *Trin.* 21 *Car.* 2.

Of filing a bill againſt an attorney, and calling him in court.

This rule is in a great meaſure diſuſed. You ingroſs the bill on a piece of parchment ſtamped with a double penny ſtamp, which the prothonotary marks as entered, on being paid for the entry, and it is thereby ſuppoſed to be entered, though no number roll is put on the bill; then you carry the bill to *Weſtminſter*,

minſter, and give it to one of the criers, who calls the defendant in court, for which you pay him 1 *s.* After which you give a rule on the bill with the ſecondary for the defendant to appear, for which you pay 1 *s.* 4 *d.* *viz.* 1 *s.* for the king's duty, and 4 *d.* for the rule; and then you file the bill in the prothonotary's office, for which you pay 4 *d.* And heretofore it was not neceſſary to give the defendant any other notice of filing ſuch bill againſt him than the calling him in court as aforeſaid by the crier, which, as all attornies of the court were ſuppoſed to be perſonally preſent in court during the ſitting thereof, was then thought to be ſufficient notice. But many attornies having been ſtruck off the roll on forejudgers for want of other notice; and many living in ſuch remote parts of the kingdom, that it was impoſſible for them to have notice time enough to give order for their appearance before the rule (which was a four day rule) was expired, this practice is altered; and now,

Note, get it ſtamped, &c.

Note, paid in court 6 d. *for the rule.*

Where a bill ſhall be filed againſt an attorney of the court, no forejudger ſhall be entered for want of appearance, if the action be laid in *London* or *Middleſex*, and the attorney reſides within 20 miles of *London*, until four days after notice in writing of filing ſuch bill be given to ſuch attorney or his agent, or left at his uſual place of abode, and a rule given for ſuch appearance as uſual; and if ſuch attorney reſides above 20 miles from *London*, or the action be in any other county than *London* or *Middleſex*, no forejudger ſhall

No forejudger till notice in writing.

ſhall be entered till eight days after ſuch notice ſhall be given in manner as aforeſaid, and a rule to appear; the ſaid days to be excluſive of the days of giving ſuch notice. *Hil.* 11 *Geo.* 2.

Common Pleas.
J. T.
againſt
J. H. gent. one of the attornies, *&c.*

Notice of a bill being filed.

Take notice, that a bill was this day filed in the prothonotary's office in the Inner Temple *London*, againſt you the defendant *J. H.* at the ſuit of the plaintiff *J. T.* in an action of treſpaſs upon the caſe on ſeveral promiſes; and unleſs you appear to the ſaid bill on *Monday* the * twenty-ſixth day of *January* inſtant, you will be forejudged the court.

E. B.
Attorney for the plt.

23 *Jan.* 1778.
To *J. H.* deft.

Common Pleas. *S. J.* againſt *H. B.*

Take notice, that there is left in the prothonotary's office, in the *Inner Temple*, *London*, a declaration againſt you the deft. at

* This is the day given by the ſecondary's rule which is incluſive; *ſed vide regul. Hil.* 11 *Geo.* 2 *ſupra*, which ſays the days are to be excluſive,

the

the ſuit of the plt. *S. J.* in an action upon the caſe on ſeveral promiſes for goods ſold and delivered, and for the balance of an account which the plaintiff lays to his damage of 100*l.* and unleſs you plead to the ſaid declaration within four days next after the firſt day of next *Hilary* term, judgment will be entered againſt you by default.

To *H. B.* deft. *J. R.* attorney for the plt.

Of forejudging an attorney.

If the defendant appears, he enters his appearance with the prothonotary. If the defendant does not appear, you enter the bill and a forejudger on the roll, in the following form, beginning with a memorandum, as in the *King's Bench.*

Memorandum.

Middleſex, *to wit*, Be it remembered, that on the day of in this ſame term *G. H.* came here into court by *L. R.* his attorney, and exhibited to the juſtices of our now lord the king of the bench here his bill againſt *J. B.* gent. one of the attornies of the court of our ſaid now lord the king of the bench here preſent here in court in his proper perſon, in a plea of treſpaſs on the caſe, the tenor of which ſaid bill followeth in theſe words; *to wit*, to the juſtices of our lord the king of the bench. *Middleſex*, to wit, *G. H.* by *L. R.* his attorney complaineth of *J. B.* gentleman, *&c.* (*the whole bill to*) and thereupon he prayeth relief, *&c.* Pledges for procuting

Forejudger. ſecuting, *John Doe* and *Richard Roe*; whereupon the ſaid *J. B.* being ſolemnly called came not, therefore he ſtandeth forejudged from exerciſing his office of attorney of this court for his contumacy, *&c.*

You pay the prothonotary 2 *s.* for ſigning the forejudger, and the clerk of the warrants 1 *s.* 4 *d.* for ſtriking the defendant off the roll, and then you may proceed againſt him as againſt a common perſon. And ſo muſt every other perſon; for after a forejudger he cannot be proceeded againſt by bill.

But if the defendant enters his appearance in time with the prothonotary, you deliver him a declaration and proceed as in other caſes; but the declaration and iſſue begin with a memorandum in the form aforeſaid, and in both caſes you add the pledges to proſecute at the end of the declaration. You muſt alſo make all your writs, as *Venire facias*, *&c.* returnable on a day certain, *prox. poſt* the general return day.

A writ of privilege for an attorney ſued in the palace court.

GEORGE the third by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the judges of our court of our palace at *Weſtminſter*, and to every of them, greeting. Whereas as well by reaſon of our royal dignity as according to the ancient cuſtom of our court of the bench at *Weſtminſter* from time immemorial hitherto uſed and approved in the ſame, no attorney of our ſaid court of the bench, being bound by oath to follow his office

office for us and our people, ought, nor for all the time aforeſaid hath been accuſtomed, to be taken, arreſted, impriſoned, or againſt his will drawn or compelled to anſwer any perſon before any of our juſtices or officers, or any other ſecular judges whatſoever, elſewhere or otherwiſe than by bill, to be filed againſt him before our juſtices of our ſaid court of the bench, in or upon any pleas, plaints or demands which do not particularly concern us (pleas or cauſes of freehold, felony, and appeals only excepted.) And, whereas we have lately received information of the great complaint of *John Rayner* one of the attornies of our ſaid court of the bench, that ſeveral ill-diſpoſed perſons, notwithſtanding our dignity, the cuſtom and privilege aforeſaid, do, as we have underſtood, intend to take, arreſt, impriſon and diſquiet the ſaid *John*, or you have drawn, or do intend by your ſervants or officers to draw, into pleas or plaints to be levied in our court before you, which do not relate to us, the ſaid *John*, whoſe conſtant attendance is required in our ſaid court of the bench, which, ſhould it be permitted, would be in future a very evil example to others, as well as totally take away the juriſdiction, cuſtom, and privilege of our ſaid court of the bench, and tend not only to the manifeſt detriment, derogation and diminution of our dignity, the juriſdiction of our ſaid court of the bench, and the liberties, privileges, and cuſtoms thereof, but alſo to the great damage of many of our ſubjects proſecuting and defending

ſuits

ſuits in our ſaid court of the bench, and to the grievance of the ſaid *John*, and to the great detriment of his clients. Wherefore the ſaid *John* hath implored us to grant him his proper remedy in this behalf, and we being willing that what is juſt and reaſonable ſhould be done for the ſaid *John*, and likewiſe that the juriſdiction, honor, cuſtom, liberty and privilege of our ſaid court of the bench ſo immemorially uſed and approved ſhould be inviolably preſerved, do command and firmly enjoin you, and each and every of you, that you and each and every of you do wholly deſiſt from taking, arreſting, impriſoning or in any wiſe moleſting the ſaid *John* at the ſuit of any perſon, and from proceeding in any plaint or plea whatſoever depending in our ſaid court before you, any or either of you, againſt the ſaid *John*, by whomſoever levied or to be levied, by whatſoever name the ſaid *John* be therein called (pleas and cauſes of freehold, felony, and appeals only excepted.) And if you, or any of you, have taken the ſaid *John* before the receipt of this writ againſt the cuſtom, liberty, and privilege aforeſaid, that then you, and each and every of you, immediately diſcharge the ſaid *John* from that arreſt, and that you inform the ſaid parties plaintiffs in the ſaid plaints from us, that they may proſecute their pleas and plaints aforeſaid by filing their reſpective bills therein, againſt the ſaid *John* before our juſtices of the ſaid court of the bench, according to the cuſtom thereof from time immemorial, uſed

and approved in the ſame, to obtain juſtice there, if they ſhall think it expedient ſo to do. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the 13th day of *February*, in the 18th year of our reign.

Another where an attorney was arreſted by Capias ad reſpondendum. 2.

GEORGE the third, *&c.* To the ſheriffs of *London*, greeting. Whereas, according to the cuſtom of our court of the bench at *Weſtminſter* hitherto uſed and approved of in the ſame, the attornies of our ſaid court of the bench, whilſt they are proſecuting and defending ſuits and actions therein for their clients, ought not, nor have they for time immemorial been uſed, to be compelled to anſwer before us, or any of our juſtices or officers, or any other ſecular judges whatſoever, upon any pleas, plaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted) ſave only before our juſtices of our ſaid court of the bench, by bill exhibited in our ſaid court, and not by original writ. And we have lately received information by the complaint of *A. B.* one of the attornies of our ſaid court of the bench, proſecuting, following, and defending ſuits and actions in our ſaid court for his clients, that ſeveral ill-diſpoſed perſons, intending to diſquiet the ſaid *A. B.* have ſued and proſecuted him by original writ or writs iſſued out of our high court of *Chancery*, returnable before our ſaid juſtices of the bench, and by writ or writs of *Capias ad reſpondendum* iſſued forth thereupon, and have cauſed him the ſaid *A. B.* to

be arreſted and detained in your cuſtody, by virtue of one or more of the ſaid writs of *Capias ad reſpondendum*, in ſuits which do not relate to us, or in pleas of freehold, felony, or appeals; whereby the ſaid *A. B.* is unable to attend his ſaid office as an attorney, upon the ſaid ſeveral ſuits and actions depending in our ſaid court of the bench, which, if it is permitted, will manifeſtly take away and be in derogation and diminution of the liberties and privileges of the ſaid *A. B.* and to the great detriment of the ſaid *A. B.* and his clients; and becauſe we are willing that the juriſdiction, privileges, and cuſtoms, for ſo long time uſed and approved of in our ſaid court of the bench, ſhould be inviolably obſerved, We command you, that you deſiſt from taking the ſaid *A. B.* into your cuſtody upon any of the ſaid writs of *Capias ad reſpondendum*; and if the ſaid *A. B.* be detained in your cuſtody by any ſuch writ or writs of *Capias ad reſpondendum*, and for no other cauſe, that then you ſuperſede and ſuffer him to go at large, as you will anſwer the contrary at your peril; and that you inform the party or parties, plaintiff or plaintiffs in the ſuit or ſuits, that he, ſhe, or they may proſecute his, her, or their ſaid ſuits, before our juſtices of our ſaid court of the bench, by bill or bills to be exhibited to the ſaid juſtices againſt the ſaid *A. B.* if he, ſhe, or they think it expedient ſo to do. Witneſs, *&c.*

This writ muſt be engroſſed on a four ſixpenny ſtampt piece of parchment, and ſigned by

by the clerk of the warrants, which he will do *gratis*, (unleſs the attorney is in arrear for termages) and alſo by the prothonotary, *gratis* too; ſealing 7 *d.*

Then deliver the writ to the ſecondary of the court, where the action is brought, whoſe fee for allowing ſame is 2*s.* 8*d.* for *Superſedeas* and ſearching office 1 *s.* 4*d.* If attorney is in cuſtody, the *Superſedeas* muſt be ſerved on officer in whoſe cuſtody he is.

Form of *Superſedeas* to the palace court.

"TO all and every the officers of his majeſty's palace court.

If arreſted, diſcharge, if not, forbear to arreſt *J. R.* gentleman at the ſuit of *B. G.* he having this day allowed his writ of privilege, as one of the attornies of his majeſty's court of common bench at *Weſtminſter*; dated the day of *November*, 1777.

R. S.

A certificate of the allowance of the writ of privilege, the ſecondary will give you on demand.

Form of certificate of the allowance of writ of privilege.

To all, *&c.* as before.

This is to certify that *J. R.* gent. hath this day, &c. as in *Superſedeas.*

When the proceſs for arreſting is returned by the officer, that defendant is privileged,

the writ of privilege is ſpent, and another writ muſt be allowed if defendant wiſhes to avail himſelf of his privilege again, and ſo *toties quoties*, for it will ſerve him but in one action.

No attorney to be privileged in any ſuit, unleſs it appears on the face of the declaration that he ſues for fees, and no priviledge, where he is defendant.

An attachment againſt an attorney or any other, for a contempt, is in this form:

An attachment for a contempt.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. Attach *L. J.* gentleman, one of the attornies of our court of the bench [*or* A. B. *any other perſon*] ſo that you may have his body before our juſtices at *Weſtminſter* on next after to anſwer us of and upon ſuch things as on our behalf ſhall be then and there objected againſt him; and have there this writ. Witneſs, *&c.*

This writ is obtained on rule of court, which muſt be taken to clerk in court or from office, who will thereupon make out attachment, for which he charges 13*s.* 4*d.* this writ is taken to ſheriff of county, in which party to be attached reſides; who will make out warrant for 2*s.* 6*d.*

Affidavit of ſervice of a rule with an allocatur of coſts, and a demand thereof, on or about ſuch a day is ſufficient for an attachment for non-payment of them. 2 *Wilſ.* 227.

Bill

Bill of COSTS on proceedings againſt an ATTORNEY.

	Out of pocket			Agent			Attorney		
Warrant and inſtructions.	0	0	0	0	2	2	0	4	4
Searching of what court defendant admitted.	0	0	0	0	1	8	0	3	4
Drawing bill from 20 at one ſhilling per folio.	0	0	0	0	10	0	1	0	0
Engroſſing at 4*d.* per folio parchment and duty.	0	1	0	0	4	4	0	7	8
Calling defendant into court.	0	1	0	0	1	0	0	1	0
Attending for that purpoſe.	0	0	0	0	1	8	0	3	4
Rule for appearance and duty.	0	1	11	0	2	8	0	3	6
Entring and filing bill.	0	12	4	0	12	4	0	12	4
Notice of bill filed, copy and ſervice.	0	0	0	0	1	6	0	3	0
Searching for appearance.	0	0	0	0	1	8	0	3	4
Engroſſing declaration at 4*d.* per ſheet and duty to deliver.									

N. B. *The reſt of the bill runs the ſame, and the items therein for fees and diſburſements, are uſual in other ſuits in this court.*

Of writs of Habeas corpus cum cauſa.

Writs of Habeas corpus cum cauſa.

THEY are uſed for two purpoſes; *Firſt*, To remove cauſes from inferior courts into this court, to be here determined. *Secondly*, To remove the body of a defendant out of any other priſon into the priſon of the *Fleet*.

As to the firſt, many abuſes having been committed in the obtaining and proſecuting ſuch writs, ſeveral laws have been made for remedying the ſame.

Before the ſtatute of 43 *Eliz. c.* 5. it was uſual for a defendant in an action commenced in an inferior court, to ſuffer ſuch cauſe to be proceeded in till iſſue joined, the jury ſworn, and evidence given for the plaintiff, before he would deliver into court his writ of *Habeas corpus cum cauſa*, or other writ which he had before ſued out for removing the ſaid cauſe into this or ſome other of the courts at *Weſtminſter*; and this done merely to put the plaintiff to as much expence as poſſible, and to come at a knowledge of his evidence. But by that ſtatute it is enacted, That no writ of *Habeas corpus*, or other writ for the removing a cauſe out of any inferior court, ſhall be received or allowed by the judge or officer to whom the ſame ſhall be delivered (but that he may proceed in ſuch cauſe as if no ſuch writ had been delivered to him), except the writ be deliver-

Cauſe not to be removed by Habeas corpus, *unleſs delivered before the jury ſworn.*

ed

ed before the jury, which is to try the iſſue, have appeared, and one of them be ſworn to try the cauſe.

Nor un'leſs delivered before iſſue joined.

And by the ſtatute 21 *Jac.* 1. *c.* 23. no writ of *Habeas corpus*, *Certiorari*, or other writ to remove any action commenced within any city, liberty, *&c.* ſhall be allowed by the ſteward, judge, *&c.* of ſuch court, unleſs delivered before iſſue or demurrer joined in ſuch cauſe, ſo as the ſaid iſſue or demurrer be not joined within ſix weeks after the arreſt or appearance of the defendant to ſuch action or ſuit.

If carried back by Procedendo *not to be removed again before judgment.*

And if any action commenced in ſuch court of record in any city, liberty, *&c.* ſhall be removed by any writ or proceſs, and afterwards be remanded back by writ of *Procedendo*, or other writ, then the ſaid action ſhall never afterwards be removed or ſtayed before judgment, by any writ out of any court whatſoever.

Cauſe not concerning freehold, and not exceeding 5 l. *not to be removed.*

And if in any action or cauſe not concerning freehold, inheritance, title of lands, leaſe or rent commenced in any ſuch court of record, it ſhall appear or be laid in the declaration, that the debt, damages or thing demanded doth not exceed 5*l.* then ſuch action ſhall not be ſtayed by any writ whatſoever, other than writ of error or attaint.

To what courts this extends.

But this act is only to extend to ſuch courts of record in cities, liberties, *&c.* and for ſo long time only as there ſhall be an utter barriſter of three years ſtanding, ſteward, *&c.* or judge, or recorder of ſuch interior court, or aſſiſtant to ſuch judge of the ſame

inferior court, as ſhall not be an utter barriſter of that ſtanding, and not of counſel in any action in ſuch inferior court.

The ſubtilty of ill deſigning people in time got over, and rendered ineffectual this act. A vexatious defendant ſued in an inferior court for a debt under 5 *l.* perhaps not 20 *s.* would ſet up a fictitious action againſt himſelf for a pretended demand of above 5 *l.* and then bring a *Habeas corpus cum cauſa*, which would take in both actions, and by this contrivance procure the ſmalleſt action to be removed into a ſuperior court, whereby a plaintiff, that could not bear the expence of ſuch ſuperior court, has been obliged to ſubmit to the loſs of his juſt demands.

Inferior courts may proceed in actions not exceeding 5 l. *though there be other actions for above* 5 l.

But by an act made 12 *Geo.* I. *c.* 29. *ſ.* 3. 21 *Geo.* II. *c.* 3. the judges of ſuch inferior courts, as are deſcribed in the ſtatute 21 *J.* I. may proceed in ſuch actions, *&c.* as are therein ſpecified, which appear or are laid not to exceed 5 *l.* altho' there may be other actions againſt ſuch defendants wherein the plaintiffs demands ſhall exceed 5 *l.*

Habeas cor. *directed to any ſheriff (except of* Lond. *or* Mid.) *to be returnable on a day certain in term.*

A writ of *Habeas corpus cum cauſa ad faciendum & recipiendum*, directed to any ſheriff (other than of *London* or *Middleſex*) muſt be returnable in court at a day certain in term, and not be made returnable immediately or in the vacation. *Mich.* 1654.

If to the ſher. of Lond. *or* Mid. *may be*

But ſuch writ of *Habeas corpus* directed to the ſheriffs of *London*, or to the ſheriff of *Middleſex*, may be granted in term or vacation

tion returnable immediately. *Same rule. Vide poſtea, fol.* 314.

returnable immediately.

Where a writ of *Habeas corpus* made returnable immediately is directed to any ſheriff, he ought to make his return the ſame day that the writ is delivered, and to bring the body immediately, as required by the writ. *Same rule.*

And the ſheriff muſt return ſuch writ the ſame day.

If upon the return of the *Habeas corpus*, the priſoner is returned charged with proceſs out of the *King's Bench* or *Exchequer*, and with proceſs out of the *Common Pleas*, he may be committed with thoſe cauſes. *Same rule.*

Priſoner charged with proceſs out of this court, may be committed, tho' charged with proceſs out of K. B. *or* Exc.

And if the priſoner upon a *Habeas corpus cum cauſa* be returned charged with proceſs out of the *Common Pleas*, though it be returnable at a future day, he may be committed with this cauſe. *Same rule.*

If charged with proceſs out of this court, returnable at a day to come, may be committed.

All writs of *Habeas corpus* returnable in court, muſt be made returnable at a day certain. *Mich.* 1654. *Hil.* 13, 14 *Car.* 2.

Return of a H. C. *muſt be at a day certain.*

If a perſon in cuſtody of any ſheriff or gaoler, charged with proceſs iſſuing out of the *King's Bench* or *Exchequer*, and not with any proceſs out of this court, be minded to be turned over to the priſon of the *Fleet*, he muſt procure himſelf to be charged with ſome proceſs iſſuing out of the court of *Common Pleas* before he bring his writ of *Habeas corpus*, that he may be returned charged therewith, otherwiſe he cannot be turned over. See *Barnes* 400.

Of removing a priſoner into the Fleet.

The form of the writ of Habeas corpus cum cauſa.

A H. C. *to the ſheriff of* Mid. *ret. immediately before a judge.*

GEORGE the third, *&c.* To the ſheriff of *Middleſex*, greeting. We command you, that you have the body of *T. M.* detained in your priſon under your cuſtody, as it is ſaid, by whatſoever name he is called in the ſame, together with the day and cauſe of the taking and detaining the ſaid *T.* before Sir *William De Grey*, knight, our chief juſtice [or before Sir *Henry Gould*, knight, one of our juſtices] of the bench, at his chambers in *Serjeants Inn* in *Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our ſaid chief juſtice [or juſtice] ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

If the *Habeas corpus* be returnable before the chief juſtice, any other judge of the court may commit the defendant thereon to the *Fleet*.

The expences of this writ, allowance, &c. are.

	l.	*s.*	*d.*
Stamp duty	0	5	0
Judge ſigning	0	4	0
Prothonotary ſigning	0	1	4
Seal	0	0	7
To the ſheriff of *Middleſex* for the allowance	0	4	8
For the return thereof, if but one writ	0	2	4
For every writ more againſt the defendant	0	2	4
For a warrant to the bailiff to conduct the priſoner before a judge or into court	0	2	4
And if the defendant is in priſon, then for a warrant to the gaoler to deliver him to the bailiff	0	2	4
To the bailiff for bringing him up	0	10	0

Beſides the fees at the judge's chambers, or in court.

GEORGE the third, *&c.* To the judges of our court of our palace at *Weſtminſter*, and to every of them, greeting. We command you, that you have the body of *J. C.* detained in our priſon under your cuſtody, as it is ſaid, by whatſoever name he may be called in the ſame, together with the day and cauſe of the taking and detaining the ſaid *J. C.* before Sir *William De Grey*, knight, our chief juſtice of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*,

A Hab. corp. *to the palace court.*

Lane, immediately after the receipt of this writ, to do and receive what our ſaid chief juſtice ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

	l.	*s.*	*d.*
The allowance at the marſhal's court for the firſt cauſe, is	0	4	8
For every cauſe after the firſt -	0	1	0
[If bailed] the ſtamp duty ——	0	2	0
Judge's clerk taking the bail —	0	7	6

Ha. cor. *to an inferior court within 5 miles of* London *may be ret. immediately.*

Writs of *Habeas corpus* directed to the inferior courts of *London*, *Weſtminſter*, and *Southwark*, and other courts within five miles of *London*, may be returnable immediately. *Mich.* 1654. and *Hil.* 13 & 14 *Car.* 2. *Vide antea*, *fol.* 310, 311.

Bail taken in abſence of plt. or his attorney to be de bene eſſe; *and if no exception within* 20 *days to be filed.*

If bail be taken in the abſence of the plaintiff or his attorney, the ſame is to be taken *de bene eſſe*; and if on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when, and before whom put in, no exception be taken within twenty days, then the bail is to be delivered over to be filed. *Same rules.*

If no exception, and bail not filed within 4 *days after the* 20, *a* Procedendo.

And if no exception be taken to bail put in on a *Habeas corpus* before a judge at his chamber, then unleſs the bail be filed within four days after the expiration of the twenty days, a *Procedendo* may be granted, upon a certificate that the bail is not filed. *Same rules.*

Where

Where bail is taken of a perſon in cuſtody, the judge's clerk is to deliver the bail to the prothonotary, to be filed if aſſented to; and for that purpoſe the prothonotary's fees are to be depoſited; but the priſoner is not to be diſcharged until the bail be aſſented unto, or the plaintiff over-ruled in open court to accept the ſame upon examination. *Same rules.*

Bail taken of priſoners to be delivered to prothonotary to be filed.

But priſoner not to be diſcharged till bail be aſſented to, &c.

In all caſes where bail was put in in the inferior court, if the cauſe be removed by *Habeas corpus* into this court, bail muſt be put in here on the removal, though the debt be under 10 *l.* except the defendant be an heir, executor or adminiſtrator, *&c.*

Bail in all caſes of removal where bail below, except.

When the *Habeas corpus* is allowed in the inferior court, and returnable before a judge at his chambers, the plaintiff's attorney muſt get an order from one of the judge's clerks for a *Procedendo*, unleſs the defendant put in bail by the time limited by the order, *viz.* in term-time within four days, and in vacation within ſix days after notice of the rule, a copy of which muſt be ſerved on the defendant's attorney.

Rule for Procedendo *unleſs bail in 4 days in term, and in 6 days in vacation.*

If the plaintiff's attorney diſlike the bail, he ſerves the defendant's attorney with a like order for a *Procedendo*, unleſs better bail be put in within four days.

Rule for better bail.

If this exception to the bail be in vacation-time, 'tis uſual (though I don't ſee to what purpoſe) to juſtify within the four days before a judge at his chambers, for which you pay 2 *s.* and then the bail muſt juſtify the firſt day of the next term in court.

Of juſtifying.

The

The defendant's attorney must give the like notice to the plaintiff's attorney of the putting in bail, and justifying, as in other cases.

There is no limited time for the plaintiff's getting an order for a *Procedendo* unless bail be put in, and has been done after two terms; but if the defendant had put in bail in time, and the plaintiff had not declared in two terms, the cause had been out of court. *Barnes* 90, 91.

Causes removed from cities and towns where the judges seldom go, to be laid in the county wherein, &c

If a cause be removed by *Habeas corpus* out of the courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield* or *Pool*, or other counties where the judges of *Nisi prius* seldom go, if the action be transitory, it must be laid in the county of *Kent*, *Southampton*, *York*, *Stafford* or *Dorset*, or other county where such city or town lies, and the recognizance is to be taken accordingly. *Mich.* 1654.

A Habeas corpus ad satisfaciendum *to the warden of the* Fleet *to bring a prisoner up to be charged in execution.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the warden of our prison of the *Fleet*, greeting. We command you, that you have before our justices at *Westminster*, on *Wednesday* next after three weeks of the Holy *Trinity*, the body of *B. C.* late of *London*, stationer, detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, to satisfy *S. T.* of 30 *l.* for his damages which he has sustained, as well by occasion of the not performing certain promises and undertakings lately made by the said *B.* to the said *S.* as for costs and charges by him about

about his ſuit in that behalf expended, whereof the ſaid *B.* is convicted; and further to do and receive what our ſaid court ſhall then and there conſider of him in this behalf; and have there, *&c.* Clift's Entr. 371.

You pay.

	l.	*s.*	*d.*
At the *Fleet* —— ——	0	9	4
In court to the ſecondary ——	0	9	0
Criers —— ——	0	2	0
Tipſtaff bringing up the priſoner	0	10	0
If you draw up the rule you pay the ſecondary more —	0	2	6
And at the *Fleet* —— ——	0	2	6

A *Habeas corpus ad ſatisfaciendum* may iſſue to the warden of the *Fleet*, or the keeper of any inferior priſon of a liberty or franchiſe, returnable in court at a day certain, and the number roll of the judgment to be indorſed upon the writ by the attorney who ſues it out, and ſuch writ ſhall be a good cauſe of detainer. *Mich.* 1654. *Number roll to be indorſed.*

If a defendant be brought into court upon a *Habeas corpus ad ſatisfaciendum*, he can be charged in execution upon that judgment only, on which the *Habeas corpus ad ſatisfaciendum* iſſued; and if there be ſeveral judgments, on which he is to be charged in execution, there be a writ of *Habeas corpus* on each judgment. *On ſeveral judgments there muſt be ſeparate writs of* Habeas corpus ad ſatisfaciendum.

GEORGE the third, *&c.* To the marſhal of our *Marſhalſea* before us, greeting. Habeas corpus ad ſatisfaciendum *di-*

rected to the marſhal of the King's Bench.

ing. We command you, that you have before our juſtices at *Weſtminſter*, on *Friday* next after fifteen-days of Saint *Martin*, the body of *J. N.* Eſq; in our priſon, under your cuſtody detained, as it is ſaid, together with the day and cauſe of the taking and detaining him, by whatſoever name he is called in the ſame, to ſatisfy *L. M.* widow, of 120*l.* which the ſaid *J.* heretofore, *to wit*, on the 7th day of *October* in the year of our reign before Sir *Robert Eyre*, knt. late chief juſtice of our court of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, acknowledged to owe to the ſaid *L.* to be levied of his lands and chattels, as by the ſaid recognizance in our court of the bench aforeſaid remaining of record plainly appears. And whereupon it is conſidered in our ſaid court, that the ſaid *L.* have execution againſt the ſaid *J.* of the ſaid 120*l.* by the default of the ſaid *J.* And whereupon our ſheriff of *Middleſex* returned to our juſtices at *Weſtminſter* from the day of Saint *Michael* in three weeks laſt paſt, that the ſaid *J.* has no goods or chattels in his bailiwick, whereof he could cauſe to be made the ſaid 120*l.* or any part thereof; and further to do and receive what our ſaid court ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

Sci. fa.'

Procedendo *to the palace court on a* Habeas corpus.

GEORGE the third, *&c.* To the judges of our court of our palace at *Weſtminſter*, and to each of them, greeting. Whereas we by our writ lately commanded you,

you, that you ſhall have before Sir *John Eardly Wilmot*, knt. our chief juſtice of the bench, at his chamber ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, immediately after the receipt of the ſaid writ, the body of *R. W.* detained in our priſon under your cuſtody, as it is ſaid, together with the day and cauſe of the taking and detaining him, by whatſoever name the ſaid *R.* is called, to do and receive what our ſaid chief juſtice ſhould conſider of him in that behalf; yet for certain cauſes in this behalf ſpecially moving our juſtices of the bench aforeſaid at *Weſtminſter*, We command you, and each of you, that in all ſuits and plaints againſt the ſaid *R.* at the ſuit of *J. W.* in our court before you moved or depending, you proceed with effect according to the law and cuſtom of *England* and the court aforeſaid, notwithſtanding any writ lately directed to you to the contrary. Witneſs, *&c.*

GEORGE the third, *&c.* To, *&c.* Whereas, *&c.* (*reciting the writ of* Habeas corpus): We command you, that in all and ſingular pleas and plaints in our court before you, againſt the ſaid *L.* moved or depending, you proceed with effect, notwithſtanding our ſaid writ of *Habeas corpus* to the contrary lately thereupon directed to you. Witneſs, *&c.* *The like in another form.*

GEORGE the third, *&c.* To, *&c.* Whereas we by our writ lately commanded you, that you ſhould have before our juſtices *On a writ of* Habeas corpus *returnable in court.*

ſtices at *Weſtminſter*, on *Wedneſday* next after fifteen days of Saint *Martin*, the body of *C. H.* detained in our priſon under your cuſtody, as it was ſaid, by whatſoever name he was called, together with the day and cauſe of the taking and detaining the ſaid *C.* to do and receive what our ſaid juſtices ſhould conſider of him in this behalf; yet for certain cauſes in this behalf moving our ſaid juſtices at *Weſtminſter*, We command you, that in all and ſingular ſuits and plaints, *&c. as before.*

As the *Habeas corpus* removes all cauſes againſt the defendant in the inferior court, the *Procedendo* carries back all the cauſes that were removed.

Of PRISONERS.

A Man having cauſe of action againſt a priſoner was formerly obliged to bring him into court by a *Habeas corpus*, and then declare againſt him; but by the *Stat.* 4 & 5 *W. & M.* it is enacted, That if any perſon be taken or charged in cuſtody at the ſuit of any other perſon, upon any writ or writs iſſuing out of any of the courts of *Weſtminſter*, and impriſoned for want of ſureties for his appearance, the plaintiff in ſuch writ may, before the end of next term after ſuch writ ſhall be returnable, declare againſt ſuch priſoner in the court out of which ſuch writ or writs ſhall iſſue, whereupon ſuch priſoner

Where defendant is in cuſtody for want of bail.

Plaintiff before end of next term after return of the writ may declare againſt ſuch priſoner.

ſoner ſhall be taken, or charged in cuſtody, and may cauſe a true copy of the declaration to be delivered unto ſuch priſoner, or to the gaoler or keeper of the priſon in whoſe cuſtody ſuch priſoner ſhall be, to which declaration the ſaid priſoner ſhall appear and plead; but if he ſhall not appear thereto, the plaintiff ſhall in ſuch caſe have judgment as if the priſoner had appeared and refuſed to plead.

And have judgment in default of appearance and plea.

Where defendant remains in cuſtody of ſheriff for want of bail, plaintiff muſt declare againſt him in cuſtody of the ſheriff. *Barnes* 400.

No copy of a declaration ſhall be delivered to any priſoner, until after the proceſs upon which ſuch priſoner ſhall be taken or charged in cuſtody be returnable. *Paſc.* 5 *W. & M.*

Declaration not to be delivered to priſoner till after the return of the writ.

A priſoner in cuſtody on an attachment for a contempt of the court cannot be charged with a declaration without leave of the court; and the charging a defendant with a *Capias ad ſatisfaciendum*, whilſt he was in cuſtody of the ſheriff of *Middleſex* on an attachment for a contempt of this court, has been held irregular.

Priſoner in cuſtody for a contempt not to be charged with a declaration or execution without leave.

No rule ſhall be given for the defendant in cuſtody to appear and plead to any declaration againſt him, until an affidavit be filed with the proper ſecondary of the delivery of the copy of ſuch declaration, and of the time when, and the perſon to whom the ſaid copy was delivered; and a copy of the ſaid affidavit ſhall be produced to the pro-

No rule to plead till affidavit of the delivery of the declaration.

thonotary before judgment ſigned together with a certificate from the proper officer, that no appearance is entered with him. *Paſ. 5 W. & M.*

Declaration delivered before Menſem paſchæ, *or* Craſtinum animarum, *if defendant appears within* 10 *days after the end of the reſpective term, he may imparl to the next term. Unleſs.*

If a copy of a declaration be delivered before *Menſem paſchæ*, or *Craſtinum animarum*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Eaſter* or *Michaelmas* term reſpectively, judgment may be entered againſt him upon ſuch certificate, if rules have been given; but if he does enter his appearance as aforeſaid within ten days after ſuch term, he ſhall imparl until the next term, unleſs the action be in *London* or *Middleſex*, and the defendant be in priſon within forty miles of the cities of *London* or *Weſtminſter*; and then, though the priſoner doth appear within ten days after the end of the term, he ſhall plead two days before the eſſoin-day of the next term; and in default thereof, rules having been given, judgment may be entered againſt him, as aforeſaid. *Same rule.*

If the declaration be delivered on or after Menſ. paſ. *or* Craſt. anim. *or in* Hil. *or* Trin *term, and deft. appears 2 days before the eſſoin-day of the next term, he may imparl to the next term.*

If the copy of the declaration be delivered on or after *Menſem paſchæ*, in *Eaſter* term, or *Craſtinum animarum* in *Michaelmas* term, or in *Hilary* term, or in *Trinity*, and the plaintiff ſhall thereupon give a rule to appear and plead, if the defendant enters his appearance two days preceding the eſſoin-day of the next term, he ſhall imparl until the next term; but if he ſhall not appear

within that time, judgment may be entered againſt him, as aforeſaid. *Same rule.*

If the writ be returnable in one term, and a copy of the declaration be delivered before the eſſoin-day of the next term, the plaintiff in ſuch declaration may give a rule to appear and plead; and if the defendant doth not enter his appearance and plead by that time the rules are out, judgment may be entered againſt him. *Same rule.*

If declaration delivered before eſſoin-day of the 2d term, defendant to plead without imparlance.

If the declaration be not entered or left in the office before the end of the next term after the return of the writ or proceſs (by which the defendant ſhall be taken or charged in cuſtody), and an affidavit made and filed in manner aforeſaid before the end of twenty days after ſuch term (*Eaſter* term excepted, and within ten days after *Eaſter* term), the priſoner ſhall be diſcharged, upon entering his appearance with the proper officer, by writ of *Superſedeas* made by him, according to the ancient practice of this court. *Same rule.*

If no declaration before the end of the 2d term, and affidavit filed, &c. defendant to be diſcharged by Superſedeas.

If any gaoler or keeper of any priſon, having received a copy of a declaration againſt any priſoner in his cuſtody, ſhall ſuppreſs the ſame, or not deliver it forthwith to ſuch priſoner, an attachment ſhall be entered againſt him. *Same rule.*

Gaoler concealing a declaration liable to an attachment.

It ſhall be lawful for any perſon who ſhall have cauſe of action againſt any priſoner of the *Fleet*, after filing or entering a declaration, to deliver a copy to ſuch defendant in any perſonal action, or to the turnkey or porter of the *Fleet* priſon, and after a rule

Of declaring againſt a priſoner in the Fleet.

Eight days time to plead. given to plead, to be out at eight days at moſt, after delivery of ſuch copy of the declaration, and affidavit made of ſuch delivery, to ſign judgment againſt ſuch defendant, as if he had been charged at the bar of the *Common Pleas*. *Stat.* 8 & 9 *W.* 3. *c.* 27. §. 13.

Common Pleas.

E. T. } In a plea of
againſt } treſpaſs on
W. W. late of, &c. } the caſe.

Affidavit of the delivery of a declaration againſt a priſoner.

R. R. of, &c. gent. maketh oath, That he this deponent on the 12th day of *February* laſt, at the lodge of the *Fleet* priſon, delivered a declaration in this cauſe to *W. Manning*, one of the turnkeys of the ſaid priſon, a true copy of which declaration is hereunto annexed. And this deponent alſo ſaith, that the ſaid *W. Manning* did then acknowledge to this deponent, that the defendant *W. W.* was at that time a priſoner in the ſaid priſon of the *Fleet*.

Sworn, &c. *R. R.*

When declaration to be enter'd with prothonotary before delivered.

When the defendant is in the *Fleet*, the declaration muſt be entered with the prothonotary before it be delivered to the defendant, but need not be entered before the delivery when the defendant is in any other priſon. But ſee 8 *Mod.* 227.

In an action on a joint bond where one de-

In an action of debt againſt two obligors on a joint bond conditioned for payment of money, one of the defendants was arreſted,

and continued in cuſtody for want of bail, the other obligor could not be arreſted, and now two terms being near expired, the plaintiff moved the court for time to declare, in regard the defendant in cuſtody would be diſcharged for want of being declarged againſt this term, and the other defendant could not be outlawed by that time. But the motion was denied. *Fiſher* v. *Tucker & al. Hil.* 2 *Geo.* 2. *Pract. Reg. C. P.* 327.

If defendant could not be arreſted, time to declare denied.

If any plaintiff ſhall declare againſt any defendant in cuſtody of the warden of the *Fleet*, or of any ſheriff or other officer, by virtue of any proceſs of this court, and ſhall not further proceed to judgment in three terms after ſuch declaration delivered inclusive of the term in which the declaration ſhall be delivered, the defendant having appeared, the defendant may be diſcharged out of cuſtody by *Superſedeas*, to be allowed by one of the juſtices of this court, if cauſe ſhall not be ſhewn by the plaintiff or his attorney, why ſuch plaintiff had not proceeded before that time to judgment as aforeſaid, upon notice to be given to either of them by the defendant's attorney or agent, and oath made of ſuch notice. *Paſ.* 8 *Geo.* 1.

If plaintiff proceed not to judgment in 3 terms inclusive after declaration delivered, defendant to be diſcharged.

And in caſe any plaintiff having obtained judgment in this court againſt any defendant a priſoner, as aforeſaid, ſhall not charge ſuch defendant, ſo remaining a priſoner, in execution upon the judgment ſo obtained, within two terms next after ſuch judgment ſo had and obtained, including the term in which the ſaid judgment ſhall be ſigned, ſuch de-

If plaintiff does not charge defendant in execution within 2 terms inclusive after judgment, defendant may be diſcharged.

fendant ſo remaining in priſon may be diſcharged out of cuſtody, where he ſhall be ſo detained, by *Superſedeas*, to be allowed as aforeſaid, unleſs cauſe ſhewn on like notice and oath. *Same rule.*

Defendant ſurrendering in diſcharge of his bail before declaration delivered to be declared againſt within two terms, or diſcharged.

If any defendant ſhall render himſelf, or be rendered to the *Fleet* priſon, in diſcharge of his bail, at the ſuit of any plaintiff, where no declaration has been delivered, unleſs the plaintiff ſhall declare againſt ſuch defendant within two terms after ſuch render, ſuch defendant may be diſcharged out of cuſtody, by *Superſedeas* to be allowed by one of the juſtices of this court, if cauſe be not ſhewn to the contrary by the plaintiff, or his attorney, upon notice to either of them given by the defendant's attorney or agent, and affidavit made of ſuch notice. *Same rule.*

Plaintiff not obliged to charge priſoner in execution, ſecond * term after judgment, if *he brings writ of error.* 2 *Wilſ.* 380. nor while a treaty ſubſiſts between the parties. 3 *Wilſ.* 455.

If declaration delivered, or judgment had before render, plt. to proceed to judgment in 3 terms after render, and

But where a declaration has been delivered, or judgment had againſt ſuch defendant ſo rendering himſelf, or being rendered, before ſuch render, unleſs the plaintiff ſhall proceed to judgment upon ſuch declaration delivered within three terms after ſuch render (the defendant having appeared) and charge

* Plaintiff ſhall have every day in ſecond term, to charge priſoner. 2 *Wilſ.* 380.

charge ſuch defendant in execution within two terms after ſuch judgment obtained, the defendant may be diſcharged in like manner by *Superſedeas*, unleſs cauſe ſhewn upon the like notice and affidavit. *Same rule.*

charge deft. in execution within 2 terms after judgment or deft. to be diſcharged.

No copy of a declaration delivered at the *Fleet* priſon againſt any priſoner there, ſhall be ſufficient charge to hold ſuch priſoner to bail, or to retain ſuch priſoner in cuſtody for want of bail, unleſs an affidavit that the plaintiff's cauſe of action amounts to ten pounds or upwards be firſt made, and filed in the proper prothonotary's office, and an indorſement made by the ſaid prothonotary or his deputy upon ſuch copy of a declaration, ſignifying the ſum of money ſpecified in ſuch affidavit, for which ſum ſo indorſed bail ſhall be required, and no more. *Hil.* 8 *Geo.* 2.

Copy of declaration not ſufficient to charge priſoner in cuſtody, unleſs affidavit be made that cauſe of action is 10l. *or upwards.*

If a defendant arreſted by proceſs iſſuing out of the court of *King's Bench*, and in cuſtody for want of bail, remove himſelf by *Habeas corpus* to the *Fleet* priſon, and the plaintiff charges him in the *Fleet* with a copy of a declaration, he is not obliged to make and annex an affidavit as by the above rule is directed, in regard there was an affidavit made of the debt when the plaintiff took out the proceſs upon which the defendant was arreſted; but if the declaration comes in as a new charge againſt a priſoner in cuſtody, at the ſuit of another plaintiff, there the above rule muſt be obſerved. See *Rep. & Caſ. of Pract. C. P.* 144. *Barnes* 75. *Pract. Reg. C. P.* 330.

The plt. at whoſe ſuit the priſoner was arreſted need not make ſuch affidavit.

A priſoner diſcharged for want of proſecution, if afterwards arreſted on an action on the judgment, a common appearance ſhall be taken.

Where a priſoner in the *Fleet*, or other gaol or priſon, is diſcharged, or ordered to be diſcharged by this court, or any of the juſtices thereof, by *Superſedeas* for want of proſecution, and ſuch priſoner is afterwards arreſted or detained in cuſtody by action of debt brought upon the judgment obtained in the cauſe, wherein ſuch priſoner was ſo diſcharged, or ordered to be diſcharged, a common appearance ſhall be accepted for the defendant, in ſuch action of debt upon the judgment. *Hil.* 8 *Geo.* 2. *Vide antea.*

Def. diſcharged for want of proceeding to judgment may be afterwards taken in execution; aliter *if diſcharged for want of being charged in execution.*

Where a defendant is diſcharged out of cuſtody for want of the plaintiff's proceeding to judgment, the plaintiff may afterwards proceed to judgment and take the defendant in execution thereon, and the defendant ſhall not be diſcharged; but if the plaintiff has proceeded to judgment, and the defendant be diſcharged out of cuſtody for want of being charged in execution, the defendant is totally diſcharged, and cannot afterwards be taken in execution on that judgment. *Barnes* 376, 377.

A priſoner on contempt not entitled to a day rule.

A priſoner charged with an attachment for a contempt, which is a criminal proſecution, is not intitled to a day rule.

Priſoner arreſted by proceſs of B. R. *removed into the* Fleet, *how to be proceeded againſt, or diſcharged.* S e 3 *Barnes* 384, 385.

If a defendant in cuſtody on a *King's Bench* proceſs be committed by this court, or a judge of this court, to the priſon of the *Fleet*, before a declaration delivered, the plaintiff cannot declare againſt him in the *King's Bench*, without removing him to the priſon of that court by *Habeas corpus ad reſpondendum*; but he may declare againſt him

in

in this court; and for default of declaring in due time, this court may diſcharge the defendant out of cuſtody. After a declaration delivered, the action muſt be carried on in that court, in which the plaintiff declared, though the defendant be removed to the priſon of another court; and the *Superſedeas*, for default of ſubſequent proceedings, muſt iſſue out of that court in which the plaintiff declared.

How to proceed when a defendant after being ſerved with copy of proceſs, and before declaration becomes a priſoner.

Where a defendant was ſerved with copy of proceſs, but before declaration delivered became a priſoner in the *Fleet*, and the plaintiff entered an appearance for him, purſuant to the ſtatute, and left a declaration in the office, and gave him notice of it, the court ſet aſide the proceedings, and held, that the declaration ought to have been delivered at the *Fleet*.

Superſedeas *on putting in good bail.*

GEORGE the third, *&c.* To the ſheriff of *L.* greeting. Whereas *S. S.* is detained in our priſon under your cuſtody, by virtue of our writ returnable, before our juſtices at *Weſtminſter*, on, *&c.* [*the return*] to anſwer *C. C.* in a plea of treſpaſs, and alſo in a plea of treſpaſs on the caſe, to the damage of the ſaid *C.* of 20*l.* And becauſe it ſufficiently appears to our ſaid juſtices at *Weſtminſter*, that the ſaid *S.* hath appeared in our ſaid court, and found ſufficient bail to anſwer the ſaid *C.* in the plea of treſpaſs on the caſe aforeſaid; therefore we command you, that if the ſaid *S.* is detained in our ſaid priſon under your cuſtody, by occaſion of the ſaid action,

action, and no other, then you permit him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

The like to a ſteward of a liberty.

GEORGE the third, *&c.* To chief ſteward of the liberty of *Bury St. Edmunds* in the county of *Suffolk*, greeting. Whereas by our writ we commanded our ſheriff of *Suffolk*, that he ſhould take *J. L.* gent. if he might be found in his bailiwic, and keep him ſafely, ſo that he might have his body before our juſtices at *Weſtminſter*, at a certain day in the ſaid writ ſpecified, to anſwer *W. L.* gent. in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *W.* of 300*l.* and you, by virtue of a certain warrant upon our ſaid writ by the ſheriff of the county aforeſaid thereupon directed to you, took the ſaid *J.* within the ſaid liberty, and ſtill detain him in our priſon under your cuſtody; *Yet* becauſe the ſaid *J.* after the taking aforeſaid found ſufficient bail before our ſaid juſtices at *Weſtminſter*, to anſwer the ſaid *W.* in the pleas aforeſaid; therefore we command you, that if the ſaid *J.* by the occaſion aforeſaid, and no other, is detained in our priſon under your cuſtody, then without delay you cauſe the ſaid *J.* to be diſcharged out of the ſaid priſon, and permit him to go at large. Witneſs, *&c.*

Superſedeas *on entering a common appearance.*

GEORGE the third, *&c.* To the ſheriff of *W.* greeting. Whereas *A. B.* is detained in our priſon under your cuſtody, by virtue

virtue of our writ of *Capias* iſſued out of our court before our juſtices at *Weſtminſter*, returnable before our ſaid juſtices, on, *&c.* [*the return*] to anſwer *C. D.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *C.* 30*l.* whereby 20*l.* bail was directed to be taken: But becauſe it ſufficiently appears to our ſaid juſtices at *Weſtminſter*, that the ſaid *A.* has appeared by *W. R.* his attorney to anſwer the ſaid *C.* in the plea aforeſaid, we command you, that if the ſaid *A.* be detained in our priſon under your cuſtody, by virtue of the ſaid writ, and for no other cauſe, that then you ſuffer him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

GEORGE the third, *&c.* To the ſheriff of the city of *Canterbury*, greeting. Whereas by our writ we commanded our late ſheriff of the city of *Canterbury*, that he ſhould take *J. L.* if he ſhould be found in his bailiwic, and keep him ſafely, ſo that he might have his body before our juſtices at *Weſtminſter*, from the day of St. *Michael* in three weeks in the firſt year of our reign, to anſwer *J. A.* in plea of treſpaſs, and alſo for 16*l.* of debt upon demand; and the ſaid *J. L.* by virtue of our ſaid writ was taken, and is now detained in our priſon under your cuſtody; *Yet* becauſe the ſaid *J. A.* hath in no manner hitherto proceeded in the ſaid pleas againſt the ſaid *J. L.* and the ſaid *J. L.* hath by *L. R.* his attorney appeared in our court

Superſedeas *for want of proſecution, where the deft. was taken by the late ſheriff.*

court before our juſtices at *Weſtminſter*, and is ready to anſwer the ſaid *J. A.* in the pleas aforeſaid, we therefore command you, that if the ſaid *J. L.* by the occaſion aforeſaid, and no other, is detained in our priſon under your cuſtody, then without delay you cauſe the ſaid *J. L.* to be diſcharged out of the ſaid priſon, and permit him to go at large. Witneſs, *&c.*

Superſedeas *for want of declaring in two cauſes.*

GEORGE the third, *&c.* To the ſheriff of *W.* greeting. Whereas *A. B.* is detained in our priſon under your cuſtody, by virtue of our writ of *Capias*, returnable before our juſtices at *Weſtminſter*, on, *&c.* [*the return*] to anſwer *C. D.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *C.* 20 *l.* whereupon bail for 20 *l.* was directed to be taken: And whereas the ſaid *A.* is alſo detained in our ſaid priſon under your cuſtody by virtue of another writ of *Capias*, returnable before our ſaid juſtices at *Weſtminſter*, on, *&c.* [*the return*] to anſwer *E. F.* in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *E.* of 50 *l.* whereupon bail for 40 *l.* was directed to be taken: But becauſe it ſufficiently appeareth to our ſaid juſtices at *Weſtminſter*, that the ſaid *A.* hath appeared in our court before our ſaid juſtices by *W. R.* his attorney, to anſwer as well the ſaid *C.* as the ſaid *E.* in the ſeveral pleas aforeſaid; and that the ſaid *C.* and *E.* have not, and neither of them hath, proceeded

ceeded to declare againſt the ſaid *A.* in due time after his commitment, purſuant to the rules of our court of *Common Pleas* at *Weſtminſter*; we therefore command you, that if the ſaid *A.* be detained in our priſon under your cuſtody for the cauſes aforeſaid, and no other, that then you immediately diſcharge him from your ſaid cuſtody, and ſuffer him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

GEORGE the third, *&c.* To the warden of our priſon of the *Fleet*, greeting. Whereas *J. G.* in the term of the Holy *Trinity* laſt paſt [*if delivered in the vacation, inſert the day*] was charged in our ſaid priſon under your cuſtody with a copy of a declaration, at the ſuit of *T. B.* in an action of debt upon bond for the ſum of But becauſe it ſufficiently appears to our juſtices at *Weſtminſter*, that no affidavit that the ſaid plaintiff's cauſe of action amounted to 10 *l.* or upwards, was firſt made and filed in the proper prothonotary's office, nor an indorſement made by the ſaid prothonotary or his deputy upon ſuch copy of the declaration, ſignifying the ſum of money which ſhould have been ſpecified in ſuch affidavit, according to the late rule made for that purpoſe; and becauſe the ſaid *J.* hath appeared by his lawful attorney to anſwer the ſaid *T.* in the plea aforeſaid, we command you, that if the ſaid *J.* be detained in our ſaid priſon under your cuſtody, by virtue of the ſaid declaration, and for no other cauſe, that then you ſuffer

Superſedeas *for want of an affidavit of the debt and indorſement on the back of the declaration wherewith defendant was charged in the* Fleet.

ſuffer him to go at large, as you will anſwer the contrary at your peril. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the ſixth day of *November* in the ſeventh year of our reign.

Superſedeas *for want of plaintiff's proceeding to judgment within three terms after declaration delivered.*

GEORGE the third, *&c.* To the ſheriff of *S.* greeting. Whereas *A. B.* is detained in our priſon under your cuſtody, by virtue of our writ of *Capias*, returnable before our juſtices at *Weſtminſter*, on, *&c.* [*the return*] laſt paſt, to anſwer *C. D.* in a plea of treſpaſs; and alſo in a certain plea of debt upon demand for 40 *l.* And whereas the ſaid *A.* afterwards, that is to ſay, on the 17th day of *May* laſt paſt, was charged with a declaration at the ſuit of the ſaid *C.* in the plea aforeſaid; but becauſe it appeareth to our juſtices at *Weſtminſter*, that the ſaid *A.* hath appeared in our court of *Common Pleas*, to anſwer the ſaid *C.* in the plea of debt aforeſaid, and that the ſaid *C.* hath not proceeded to judgment againſt the ſaid *A.* within three terms after the delivery of the ſaid declaration, as required by the rules of our ſaid court, we command you, that if the ſaid *A.* be detained in our priſon under your cuſtody, for the cauſe aforeſaid, and no other, you permit him to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

Superſedeas *for not charging defendant in execution*

GEORGE the third, *&c.* To the warden of our priſon of the *Fleet*, greeting. Whereas *M. D.* on the 21ſt day of *June* 1766,

1766, rendered herſelf to our ſaid priſon of the *Fleet* before eſq; one of our juſtices of our court of the bench in diſcharge of her bail, at the ſuit of *U. R.* and *H. C.* for 40 *l.* And becauſe the ſaid *U.* and *H.* have not proceeded to charge the ſaid *M.* in execution within two terms next after judgment obtained, according to the rules of our ſaid court of the bench, we therefore command you, that if the ſaid *M.* be detained in your cuſtody for that, and no other cauſe, that then you ſuffer her to go at large, as you will anſwer the contrary at your peril. Witneſs, *&c.*

within two terms after judgment.

GEORGE the third, *&c.* To the warden of our priſon of the *Fleet*, greeting. Whereas it hath been certified to our juſtices of our court of the bench at *Weſtminſter*, that *A. B.* was committed to our ſaid priſon of the *Fleet* for want of bail, upon our writ of *Habeas corpus*, at the ſuit of *C. D.* in a plea of treſpaſs, and alſo in a certain plea of debt upon demand for 45 *l.* And on the 27th of *May* 1765, was charged with a declaration at the ſuit of *E. F.* in a plea of treſpaſs on the caſe for 50 *l.* And on the 30th day of the ſame month, was charged with a declaration at the ſuit of the ſaid *C.* in a plea of debt for 40 *l.* And alſo on the 13th day of *June* then next following was charged with another declaration at the ſuit of *G. H.* in a plea of treſpaſs on the caſe for 20 *l.* And for that it appeareth to our ſaid juſtices, that the ſaid *C.* and *E.* or either of them, have not proceeded to charge the ſaid

Superſedeas *for want of proceeding to judgment and execution at the ſuit of ſeveral plaintiffs.*

ſaid *A.* in execution in due time in the ſaid cauſes or either of them, according to the rules and orders of our ſaid court; and alſo, for that it appeareth to our ſaid juſtices that the ſaid *G.* hath not in due time proceeded to judgment againſt the ſaid *A.* in the ſaid cauſe, according to the rules and orders of our ſaid court; and becauſe the ſaid *A.* hath appeared in our ſaid court by his lawful attorney in the ſeveral actions aforeſaid; therefore, *&c.*

Bill

Bill of COSTS on Proceedings againſt PRISONERS.

Michaelmas Vacation, 1777.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Retainer, attending and taking inſtructions.	0	0	0	0	2	2	0	4	4
Affidavit of debt.	0	2	7	0	4	1	0	5	7
Capias	0	4	10	0	7	11	0	11	0
Warrant thereon, and meſſenger	0	0	4	0	0	10	0	1	4
Paid officer for arreſt	0	10	6	0	10	6	0	10	6

Eaſter Term, 1778.

Searching at *Fleet* priſon for *Hab. Corp.* whereby priſoner was removed, and inſpecting the return	0	0	0	0	1	8	0	3	4
Drawing declaration and copy fol. 11	0	0	0	0	5	6	0	11	0
Entring on roll and paid prothonotary	0	6	0	0	8	6	0	11	0
Copy on ſtamp to deliver to defendant in cuſtody, and duty	0	0	3	0	2	1	0	11	11
Another copy to annex to affidavit	0	0	3	0	2	1	0	3	11
Delivering declaration at *Fleet* priſon		0	0	0	1	8	0	3	4

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid turnkey	0	1	0	0	1	0	0	1	0
Affidavit of delivering declaration, duty and oath in vacation	0	3	7	0	5	1	0	6	7
Filing declaration, and affidavit with ſecondary	0	0	0	0	1	8	0	3	4
Term fee	0	0	0	0	2	6	0	5	0
Porters letters and meſſengers	0	0	0	0	1	0	0	2	0

Trinity Term following.

Rule to plead	0	2	2	0	2	6	0	2	10
Searching for plea	0	0	0	0	1	8	0	3	4
Drawing interlocutory judgment with award of inquiry, fo. 3	0	0	0	0	1	6	0	3	0
Ingroſſing, proceedings on paper and duty, fo. 14	0	0	3	0	2	7	0	4	11
Entering ſame on roll	0	0	0	0	2	4	0	8	4

N. B. The reſt of the fees will be the ſame as on other inquiries in this court, varying according to the length of the proceedings. See bill of coſts on proceedings againſt a member of parliament. *Poſtea fol.*

COSTS

COSTS of SUPERSEDEAS to discharge PRISONER out of CUSTODY.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid for clerk of papers his certificate	0	3	6	0	3	6	0	3	6
Prothonotary's ditto	0	5	0	0	5	0	0	5	0
Three ſummonces to ſhew cauſe why defendant ſhould not be diſcharged	0	6	0	0	6	0	0	6	0
Copies and ſervice	0	0	0	0	3	0	0	6	0
Attendances	0	0	0	0	5	0	0	10	0
Affidavit of ſervice	0	2	7	0	4	1	0	5	7
Judge's *Fiat* and order	0	6	0	0	7	0	0	8	0
Superſedeas	0	5	2	0	8	6	0	11	10
Appearance for defendant	0	2	6	0	4	2	0	5	10

Proceedings in (a) *ejectment.*

An action of treſpaſs and ejectment, what it is.

AN action of treſpaſs and ejectment is given to a tenant for term of years, who is ouſted of his term, and he may thereby recover the remainder of his term and damages. It is now uſed as the moſt common action for trying titles to land in the room of many real actions.

This action is generally grounded on a mere fiction. The perſon who claims the meſſuages or lands in diſpute, and who is called the leſſor of the (*b*) plaintiff, is ſuppoſed to have made a leaſe of the premiſſes to the plaintiff for term of years yet in being; the plaintiff is ſuppoſed to have entered by virtue of that leaſe, and the defendant, who is termed the caſual (*c*) ejector (being only a nominal perſon) is ſuppoſed to have

---

(*a*) Ejectment is a fiction, and in the breaſt of the court. *Barnes* 180.

(*b*) Name of *nominal* plaintiff happening to be a real perſon's name, no cauſe for cenſuring the attorney; this proceeding being conſidered as purely fictitious, for he cannot releaſe the action, and that a perſon in human nature, of the ſame name of the nominal plaintiff, is not to be taken to be the real plaintiff. *Barnes* 189.

(*c*) Caſual ejecter cannot bring a writ of error. *Barnes* 189. Attorney ordered to *non pros* ſuch a writ at his own expence, and pay coſts. *Barnes* 181.

entered upon the plaintiff and turned him out of poſſeſſion.

The common method of commencing this action is by delivering a copy of the declation to the tenant in poſſeſſion of the premiſſes, with a notice thereunder written to appear and defend his title, or elſe that the defendant, the caſual ejector, will ſuffer judgment to go by default, and thereby the tenant be put out of poſſeſſion. *Of commencing this action.*

The tenant in poſſeſſion may be admitted to defend his title on entering into the common rule, *viz.* to become defendant in the room of the defendant the caſual ejector, receive a declaration, plead the general iſſue, and at the trial to confeſs the leaſe, entry and actual ejectment of the plaintiff. *The tenant in poſſeſſion may be admitted to defend his title, on entering into the common rule.*

In the Common Pleas.

Trinity *(d) term in the ſeventeenth year of king* George *the third.*

(e) Middleſex, to wit. JOHN *Doe*, late of the pariſh of St. *George the Martyr*, in the county of *Middleſex*, yeoman, was attached to anſwer *Richard Roe* of a plea, wherefore with force and arms he entered *Declaration in ejectment of five meſſuages.*

(*d*) Judgment refuſed upon declaration intituled *Trinity* Term, 17 *Geo.* II. inſtead of 16 and 17 *Geo.* II. In country cauſes, where declarations are of *Trinity*, notice may be good to appear in next *Hilary*, (paſſing over *Michaelmas*) though not the uſual practice. *Barnes* 186.

(*e*) Rules for judgment for lands in *Denbighſhire*, *Wales*. *Barnes* 181.

into five (*f*) meſſuages with the appurtenances in the (*g*) pariſh of *Stebon-Heath*, otherwiſe *Stepney*, in the county of *Middleſex*, which *Thomas Bland* and *Conrade de Golls* demiſed (*h*) to the ſaid *Richard* for a term which is not yet expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *Richard*, and againſt the peace of our ſovereign lord the king; and whereupon the ſaid *Richard* by *Joſeph Dobyns* his attorney complaineth, that whereas the ſaid *Thomas* and *Conrade* on the 25th day of *April* in the 6th year of the reign of his ſaid majeſty, at the ſaid pariſh of *Stebon-Heath*, otherwiſe *Stepney*, in the county aforeſaid, had demiſed to the ſaid *Richard* the ſaid tenements with the appurtenances; to have and to hold the ſaid renements with the appurtenances to the ſaid *Richard* and his aſſigns, from the 24th day of *April* aforeſaid in the year aforeſaid, unto the full end and

---

(*f*) *One meſſuage or tenement* are too uncertain words in the declaration; and judgment arreſted for that cauſe. *Barnes* 173.

(*g*) Court held the deſcription of one meſſuage with the appurtenances, in the pariſh of St. *John* the *Baptiſt*, and St. *Michael*, in the city of *Coventry*, and county of the ſame city, *or one of them*, to be totally *uncertain*, and that one of the pariſhes could not be rejected as ſurpluſage, that defendant could not know what to defend for, nor ſheriff of what to give poſſeſſion; and for this cauſe arreſted judgment, after verdict for plaintiff. *Barnes* 184.

(*h*) Demiſe is never amended, in point of time, without conſent. *Barnes* 17, 186.

term

term of five years thence next enſuing and fully to be complete and ended; by virtue of which demiſe the ſaid *Richard* entered into the ſaid tenements with the appurtenances, and was poſſeſſed thereof; and the ſaid *Richard* being ſo poſſeſſed thereof, the ſaid *John* afterwards, *to wit*, on the ſaid 25th day of *April* in the ſaid 6th year, with force and arms, *&c.* entered into the ſaid tenements with the appurtenances which the ſaid *Thomas* and *Conrade* had demiſed to the ſaid *Richard* in form aforeſaid, for the term aforeſaid which is not yet expired, and ejected the ſaid *Richard* from his ſaid farm, and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereupon the ſaid *Richard* ſaith, that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

Mr. *John Wilkinſon*, I am informed that you are in poſſeſſion of, or claim title to, the premiſſes in this declaration mentioned, or to ſome part thereof; and I being ſued in this action as a caſual ejector, and having no claim or title to the ſaid premiſſes, do adviſe you to appear on the firſt (*i*) day of the next *Michaelmas* term in his majeſty's court *The notice.*

(*i*) Where the notice to appear, on a vacant poſſeſſion in *London*, was not on the firſt day, but in the beginning of *Mich.* term; rule was made for judgment, unleſs ſome perſon claiming title appeared within four days. *Barnes* 175.

of *Common Pleas* at *Weſtminſter*, by ſome attorney of that court, and then and there by rule of the ſame court, to cauſe yourſelf to be made defendant in my ſtead, otherwiſe I ſhall ſuffer judgment therein to be entered againſt me by default, and you will be turned out of poſſeſſion. I am

Your humble Servant,
John (*k*) *Doe.*

Declaration in ejectment is the firſt proceſs. *Barnes* 173, 186.

In the Common Pleas.

Eaſter *term in the ſeventeenth year of king* George *the third.*

Declaration in ejectment of manors, meſſuages, barns, ſtables, &c.

Suffolk, *to wit.* T. C. late of *London*, gentleman, was attached to anſwer *E. S.* in a plea, wherefore with force and arms he entered into the manors of *K.* otherwiſe *K. H. C. H B.* and *G. W.* and 50 meſſuages, 50 barns, 50 ſtables, 50 gardens, 20 cottages, one water corn-mill, one wind-mill, 1000 acres of land, 1000 acres of meadow, 1000 acres of paſture, 500 acres of wood, and 500 acres of furze and heath, with the appurtenances, in the pariſhes of *G. W. L.*

(*k*) The *Engliſh* notice at the foot of the declaration was ſubſcribed by the nominal plaintiff, inſtead of the caſual ejector, which court held bad, and diſcharged the rule for judgment. *Barnes* 172.

W. B.

W. B. and *K.* in the ſaid county of *Suffolk*, which the honourable *M. G.* ſpinſter, demiſed to the ſaid *E.* for a term which is not yet expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *E.* and againſt the peace of our ſovereign lord the king; and whereupon the ſaid *E.* by *J. W.* his attorney complaineth, that whereas the ſaid *M.* on the firſt day of *January* in the 7th year of the reign of his ſaid majeſty, at *Ipſwich* in the county aforeſaid, had demiſed to the ſaid *E.* the ſaid manors and tenements, with the appurtenances; to have and to hold the ſaid manors and tenements, with the appurtenances, to the ſaid *E.* and his aſſigns, from the 29th day of *September* then laſt paſt, to the full end and term of ſeven years then next following, and fully to be complete and ended: By virtue of which ſaid demiſe the ſaid *E.* entered into the ſaid manors and tenements with the appurtenances, and was poſſeſſed thereof; and the ſaid *E.* being ſo poſſeſſed thereof, the ſaid *T.* afterwards (that is to ſay) on the firſt day of *January* in the ſaid 7th year, with force and arms, that is to ſay, with ſwords, ſtaves, and knives, entered into the ſaid manors and tenements with the appurtenances, which the ſaid *M.* demiſed to the ſaid *E.* in manner aforeſaid, for the term aforeſaid, which is not yet expired, and ejected the ſaid *E.* out of his ſaid farm, and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *E.* ſaith he is injured, and

and hath damage to the value of 20*l.* And thereof he bringeth this ſuit, *&c.*

T. H.

The notice. I am informed that you are in poſſeſſion, or claim title to the premiſſes in this declaration of ejectment mentioned, or to ſome part thereof; and I being ſued in this action as a caſual ejector, and having no claim nor title to the ſame, do adviſe you to appear on the firſt day of next *Trinity* term in his majeſty's court of Common Bench at *Weſtminſter*, by ſome attorney of that court, and then and there by rule of the ſame court to cauſe yourſelf to be made defendant in my ſtead, otherwiſe I ſhall ſuffer judgment therein to be entered againſt me, and you will be turned out of poſſeſſion. I am

Your loving friend,

20 *May* 1778. *T. C.*

Declaration was delivered to tenant in poſſeſſion, in *Trinity* vacation, with (*l*) notice to appear in *Hilary* term then next; tenant in *Michaelmas between*, entered an appearance, but proceeded no further; and four days after *Hilary* term, plaintiff finding no appearance, no common rule entered into, or plea given, left, or filed, ſigned judgment againſt caſual ejector; tenant moved to ſet aſide judgment, and on hearing council on

---

(*l*) Appearance ſhould have been entered of the term mentioned in the notice. *Barnes* 250.

both

both ſides, court was of opinion, that judgment was (*m*) regular. *Barnes* 250.

Lincoln, *to wit.* *A. B.* late of, *&c.* was attached to anſwer *C. D.* in a plea, wherefore with force and arms he entered into 500 acres of land, *&c.* in the pariſh of *S.* in the county aforeſaid, which *E. F.* demiſed to the ſaid *C.* for a term which is not yet expired; and into 500 other acres, *&c.* in the pariſh of *S.* aforeſaid in the county aforeſaid, which *G. H.* demiſed to the ſaid *C.* for a term which is not yet expired, and ejected him from his ſaid ſeveral farms, and other wrongs to him did, to the great damage of the ſaid *C.* and againſt the peace of our lord the now king, *&c.* And whereupon the ſaid *C.* by *W. R.* his attorney complaineth, that whereas the ſaid *E.* on the day of in the year of the reign of the ſaid lord the king, at in the county aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid firſt above mentioned, with the appurtenances; to have and to hold the ſame tenements firſt above mentioned with the appurtenances, to the ſaid *C.* and his aſſigns, from the feaſt of then laſt paſt, to the full end and term of

Declaration in ejectment on a double demiſe.

1. *Demiſe.*

(*m*) But as the title had not been tried, the judgment was ſet aſide on payment of coſts, entring appearance of proper term, and into common rule by conſent. *Barnes* 250.

years,

2. *Demiſe.*

years, from thence following, and fully to be complete and ended. *And whereas alſo* the ſaid *G.* on the ſame day of in the ſaid year of the reign of our ſaid lord the king, at aforeſaid in the county aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid laſt above mentioned with the appurtenances; to have and to hold the ſame tenements laſt above mentioned with the appurtenances to the ſaid *C.* and his aſſigns, from the ſaid day of then laſt paſt, to the full end and term of years from thence next following, and fully to be complete and ended: By virtue of which ſaid ſeveral demiſes the ſaid *C.* entered into the ſeveral tenements aforeſaid, with the appurtenances, and was poſſeſſed thereof; and the ſaid *C.* being ſo poſſeſſed thereof, the ſaid *A.* afterwards, that is to ſay, on the day of in the ſaid year of the reign of our ſaid lord the king, with force and arms, that is to ſay, with ſwords, ſtaves and knives, entered into the ſaid ſeveral tenements above ſpecified, with the appurtenances, reſpectively demiſed to the ſaid *C.* in manner aforeſaid, and upon the poſſeſſion of the ſaid *C.* thereof, and ejected the ſaid *C.* out of his ſaid ſeveral farms (his ſaid ſeveral terms therein not being ended) and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *C.* ſaith, that he is injured and damaged to the value of 10*l.* And thereof he bringeth ſuit, *&c.*

Sixteen

Sixteen (*n*) declarations in ejectment, ordered to be conſolidated into one, after the iſſues joined. *Barnes* 176.

In many caſes the demiſe may be laid on a day after that term of which the declaration is; as where a title accrued at *Chriſtmas*, a declaration of *Michaelmas* term is delivered before the eſſoin-day of *Hilary* term, and the demiſe is laid to be on the firſt day of *January*, if the tenant does not appear and defend, the court will give judgment againſt the caſual ejector, and the tenant cannot move in arreſt of judgment, as being no party to the ſuit; neither can a writ of error be brought in the caſual ejector's name. If the tenant does appear, all will be right, for a declaration and iſſue will be made up of *Hilary* term, which will be after the demiſe.

Demiſe may be laid on a day after the term the declaration is of. Pract Reg. C. P. 164.

No (*o*) judgment ſhall be entered againſt the caſual ejector without motion firſt made by a ſerjeant in court, and oath in writing of

No judgment againſt caſual ejector with-

(*n*) Each declaration contained a large number of meſſuages, and word for word the ſame. *N. B* had each declaration been for one meſſuage only, plaintiff might have tried them ſeparately. *Barnes* 176.

(*o*) Court declared that the intent of ſigning judgment againſt the caſual ejector, was only that the plaintiff, after having tried his cauſe againſt the landlord (tenant not being party) might have the benefit of his verdict, and take poſſeſſion under the judgment, which under verdict he could not; and that it was reaſonable (upon a proper affidavit) to grant a rule to ſhew cauſe, before judgment againſt the caſual ejector could be ſigned, to prevent the ill conſequence of taking poſſeſſion immediately after. *Barnes* 179.

notice

out motion, and notice to tenant in poſſeſſion.

notice to the owner or tenant in poſſeſſion of the lands in queſtion, notwithſtanding any former rule. *Paſc.* 12 *Car.* 2.

To whom declaration in ejectment may be delivered.

Delivery of declaration in ejectment muſt be to the tenant himſelf or his (*p*) wife, otherwiſe not good, though it be to the tenant's (*q*) father, (*r*) ſon, (*s*) daughter, (*t*) ſiſter, (*u*) ſervant, unleſs the tenant afterwards acknowledges the receipt thereof, which (*x*) acknowledgment muſt be proved to the court by affidavit.

The contents of the declaration, as well as thoſe of the notice or ſubſcription (*y*) thereto of the caſual ejector, to the tenant in poſſeſſion, muſt be ſo ſignified and explained by the party ſerving to the party ſerved, at the time of the ſervice, as be fully underſtood by the latter, be the ſervice on the tenant in poſſeſſion, or upon any other perſon; which muſt always be on the premiſſes in queſtion; except only when the tenant is ſerved perſonally, for then it need not.

(*p*) *Bul. Ni. Pri.* 95. *Barnes* 178. 180, 181, 194. See *Wilſ. Rep. C. B.* 263.

(*q*) *Barnes*, 176.

(*r*) *Barnes* 190.

(*s*) *Barnes* 175, 183, *Co. Caſ.* 115.

(*t*) *Rich. Reg.* 167.

(*u*) *Barnes* 188.

(*x*) *Bul. Ni. Pri.* 95. *Co. Caſ.* 115. *Barnes* 175, 176, 185. *Rich. Reg.* 167.

(*y*) *Barnes* 167, 168, 169, 185.

In

In every caſe of ſervice of the declaration, in the abſence of the tenant, (the caſes of ſerving tenant's father, daughter, ſiſter, ſervant, with thoſe of deſerted poſſeſſions, and thoſe eſpecially provided for by *ſtat.* 4 *Geo.* 2. chap. 28. *ſect.* 2. always and only excepted), there muſt be a tender of the copy to and refuſal thereof by tenant, at time of attempting to ſerve it, either proved or confeſſed; and that above acknowledgement by tenant, of receipt of copy, will not be deemed ſufficient (except as before excepted) in this court. See *Barnes* 171.

Service of the declaration in ejectment on the ſervant of the tenant in poſſeſſion, fixing at the ſame time copy of declaration, on ſtreet door, deemed ſufficient in this court; as well, when tenant does not abſcond, as when he does. See *Barnes* 188, 190, 192.

The declaration was tendered to the tenant in poſſeſſion, whereupon it was left upon the floor in his preſence; and he retiring into a parlour, and ſhutting the door, the perſon who ſo tendered and left the declaration, read the ſubſcription aloud, ſo that the tenant might hear it; this was held good ſervice. *Barnes* 185.

The tenant in poſſeſſion ſecreting himſelf in the houſe, ſo that he could not be perſonally ſerved with a declaration in ejectment; a rule was made to ſhew cauſe, why ſervice of it on the ſervant at the houſe, ſhould not be good; the rule to be ſerved on the ſame manner. *Barnes* 188.

On

On affidavit, that the tenant abſconded to avoid being ſerved; that ſhe came into the poſſeſſion ſurreptitiouſly, and of ſervice of declaration in ejectment on her ſon, who is her ſervant, manages her affairs, and lives in her family; rule to ſhew cauſe, why ſuch ſervice on her ſon and ſervant, ſhould not be deemed good ſervice, and leaving a copy of this rule at her houſe good ſervice, made abſolute. *Barnes* 190.

On affidavit, that one of the tenants is a lunatick; that one *C.* lives with, tranſacts her buſineſs, and has the ſole conduct thereof, and of her perſon; but would not permit the deponent to have acceſs to her with the declaration in ejectment; whereupon it was delivered to *C.* Rule that ſhe and *C.* both ſhew cauſe, why this ſervice ſhould not be good; and ſervice of this rule on him be good ſervice thereof. *Barnes* 190, 191.

On affidavit, that the tenant in poſſeſſion ſecreted himſelf to prevent his being ſerved with a declaration in ejectment, and could not be ſerved, though frequent endeavours had been uſed; and that the declaration had been delivered to his daughter, who kept his houſe (being a public houſe); and that ſhe was acquainted with the contents of the ſubſcription. A rule was made for the tenant to ſhew cauſe, why ſuch former ſervice ſhould not be deemed good ſervice; the rule to be ſerved on the daughter at the houſe. *Barnes* 192.

Service of declaration on church-wardens and overſeers of pariſh, who rented an houſe for

for harbouring ſome of the pariſh poor; and did not otherwiſe occupy the houſe than by placing the poor in it, deemed ſufficient. *Barnes* 181.

Tenant in poſſeſſion to have notice to appear the beginning of the enſuing term.

Upon the delivery of a declaration in ejectment in *London* or *Middleſex*, the tenant in poſſeſſion is to be acquainted, that he is to appear by his attorney here in court in defence of his title, in the beginning of the next term after the delivery of the declaration. And the plaintiff ſhall take nothing by his motion for judgment againſt the caſual ejector for default of appearance, unleſs the motion be made within one week next after the firſt day of every *Michaelmas* term, and every *Eaſter* term, and within four days after the firſt day of every *Hilary* and *Trinity* term. *Trin.* 32 *Car.* 2.

Within what time motion for judgment muſt be made.

This rule relates only to declarations in ejectment ſerved upon tenants in poſſeſſion; and an ejectment on a vacant poſſeſſion in *London* or *Middleſex*, on *ſtat.* 4 *Geo.* II. *chap.* 28. may be moved at any time in term. *Barnes* 172.

No inſtance in caſe of vacant poſſeſſion, (except ſuch as are within *ſtat.* 4 *Geo.* II. *chap.* 28. concerning landlords and tenant by leaſe, with a clauſe of re-entry) can be adduced, in which any perſon claiming title, hath been let in to defend; for he who can firſt ſeal a leaſe on the premiſſes, may obtain poſſeſſion, and any other perſon claiming title, may eject him if he can; and by the conſtant practice of this court, no defence can be made in this caſe, but by the defen-

dant in the ejectment, who is a real ejector. *Barnes* 177.

Declaration must be delivered before Eſſoin day of term.

A true and examined copy of the declaration on a treble penny ſtampt ſheet of paper, muſt be delivered to the tenant on or before the Eſſoin day of the then next term. 5 *Com. Dig.* 249. *Barnes* 172, 173. otherwiſe plaintiff cannot have judgment till the ſubſequent term; and the reaſon is, becauſe the declaration is the firſt proceſs. *Barnes* 173.

Notice in country ejectments.

In a country ejectment the tenant is to appear and plead within four days excluſive after the next iſſuable term; but if the lands lie in a county where the aſſizes are held but once a year, I apprehend he is not to appear and plead till four days after the term next preceding ſuch aſſizes.

In Lond. *and* Middleſex.

If the lands lie in *London* or *Middleſex*, the notice to appear ſhould be for the firſt day of the next term; if in any other county, the notice may be for the beginning of the next term, or for the next term generally.

Leave to plead *ancient* (z) *demeſne*, upon (*a*) affidavit, that premiſſes in queſtion were reputed to be lands in *ancient demeſne*. *Barnes* 185.

(z) *Barnes* 194, if he applies within the firſt four days of the term; for if this plea be not confined to a time certain, great delay of juſtice muſt follow; if plaintiff prevails on this plea to juriſdiction of court, judgment muſt be that defendant anſwer over. *Barnes* 187.

(*a*) Affidavit ſufficient to ſhew probable cauſe for pleading this plea. *Barnes* 185.

To

To move for judgment, you make an affidavit of the ſervice of the declaration in this form:

In the *Common Pleas.*

Richard Roe against *John Doe*, } In ejectment on the demiſe of *Thomas Bland* and *Conrade de Golls.*

Affidavit of ſervice of a declaration in ejectment.

L. R. of, *&c.* makes oath, that he this deponent did, on the day of laſt paſt, deliver to Mr. *John Wilkinſon*, the tenant in poſſeſſion of the premiſſes mentioned in the declaration hereunto annexed, or of ſome part thereof, a true copy of the ſaid declaration, and of the notice there under written, and did at the ſame time inform the ſaid *John Wilkinſon*, that unleſs he would appear in this court by ſome attorney thereof on the firſt day of this preſent *Michaelmas* term, and cauſe himſelf by rule of the ſaid court to be made defendant in the room of the caſual ejector *John Doe*, judgment would be entered againſt the ſaid caſual ejector by default, and that he the ſaid *John Wilkinſon* would be turned out of poſſeſſion; or words to that or the like effect.

Affidavit of ſervice "on *A. B.* tenant, *or C.* his wife," not ſufficient, *Barnes* 173, nor "on the wives of *A. B.* who, *or* one of them, are tenants." *Id.* 174, 175, but "on the wife of tenant in poſſeſſion, as ſhe informed deponent, and as he verily believes," held ſufficient. *Id.* 194. Rule to make

ſervice good, ſet aſide, becauſe the affidavit on which it was grounded, was ſworn before plaintiff's attorney, as a commiſſioner. *Id.* 92.

On this affidavit you get a ſerjeant to move for judgment againſt the caſual ejector.

You pay,

	l.	*s.*	*d.*
For the duty and oath of the affidavit ——	0	2	6
To the ſerjeant to move ——	0	10	6
Rule duty, and filing the affidavit	0	6	0

In the Common Pleas.

Hilary *the ſeventeenth of king* George *the third.*

Rule for judgment againſt the caſual ejector.

Hunt againſt *Jones*, } The caſual ejector. } TWelfth day of *February*, upon the affidavit of *Thomas Shewell*, gent. It is ordered, that unleſs *William Collins*, tenant in poſſeſſion of the tenements in queſtion, or any other perſon concerned in the title thereof on *Saturday* next ſhall appear by an attorney of this court, who ſhall then forthwith receive a declaration, and plead thereto the general iſſue, and conſent to the common rule for confeſſing leaſe, entry and ouſter, upon the trial to be had, let judgment againſt the caſual ejector be entered; and in the

the mean time proceedings are to ſtay, upon the motion of maſter ſerjeant *Baynes*.

By the court.

Entered *Fothergill.*

Secondary not to receive decl. in ejectment unleſs ſigned by a ſerjeant.

No declaration in ejectment ſhall be taken or received by the ſecondary, unleſs ſigned by ſome ſerjeant at law, and delivered by himſelf to the ſecondary in open court. *Hil.* 2 *Geo.* 2.

Secondary, on requeſt, to ſhew his alphabetical paper of ejectments.

The ſecondary ſhall the morning next after the end of every term, and at all other times when required, ſhew to any perſon, who ſhall demand the ſame, his alphabetical paper of ejectments, moved or delivered into court in each term. *Same rule.*

Of ſigning judgment againſt the caſual ejector.

When the rule is out, you ſearch the prothonotary's plea-book, and if no plea is left, you ingroſs the declaration on a double half-crown ſtamped ſheet of paper, to which you affix the rule againſt the caſual ejector, and the prothonotary will ſign judgment; then enter your judgment by *Nil dicit* on the roll, and make out a writ of *Habere facias poſſeſſionem*, for which you pay duty 1 *s.* 6 *d.* Signing 1 *s.* 4 *d.* Sealing 7 *d.*

Of the tenant's appearing.

If the tenant (*b*) appears, his attorney gets a blank rule from the ſecondary, for which he pays 6 *d.* then fills it up according to the enſuing form, and ſigns his name at the bot-

(*b*) Though appearance is generally entered after firſt four days of term, yet it is always conſidered as appearance of firſt day of the term. *Barnes* 188.

tom of it, ingroſſes the general iſſue, Not guilty (*poſtea* ,) in a double penny ſtamped ſheet of paper, and annexes the rule to it, after he enters an appearance for the tenant with the proper filacer, who thereupon ſtamps the rule, and then leaves the plea and rule annexed with the prothonotary.

Appearance for tenant (*c*) in poſſeſſion muſt be entered with filacer; and the common rule marked by him, before left in the prothonotary's office. *Barnes* 178.

The expence is as follows:

	l.	*s.*	*d.*
Search for motion for judgment againſt the caſual ejector	0	0	6
Blank rule —— ——	0	0	6
Entering appearance ——	0	2	0
Entering plea —— ——	0	2	0

In the Common Pleas.

Michaelmas *term ſeventeenth year of* George *the third.*

The general rule.

Middleſex, *to wit.* IT is ordered by conſent of *J. D.* attorney for the plaintiff, and *L. R.* attorney for *J. W.* who claims title to the tenements in queſtion, that the ſaid

---

(*c*) The common rule by conſent, having been entered for tenant, without conſent, rule to ſhew cauſe, why the judgment ſigned againſt the caſual ejector, ſhould not be ſet aſide, was diſcharged with coſts *Barnes* 178.

J. W.

J. W. shall be admitted defendant; and that the said *J. W.* shall immediately appear by his said attorney, who shall receive a declaration, and plead thereto the general issue this term; and at the trial to be had thereon shall appear in his proper person, or by his counsel or attorney, and confess the lease, entry and ouster of so much of the tenements specified in the plaintiff's declaration, as are in the possession of the said defendant or his tenants, or any persons claiming by or under his title; or that in default thereof judgment shall be thereupon entered against the defendant *John Doe* the casual ejector; but proceedings shall be stayed against him until default shall be made in any of the premisses; and by the like consent it is further ordered, that if by reason of any such default the plaintiff shall happen to be nonsuited upon the trial, the said *J. W.* shall take no advantage thereof, but shall thereupon pay to the plaintiff costs to be taxed by the prothonotary. And it is further ordered, that the lessor of the plaintiff shall be liable to the payment of costs to the said *J. W.* by the court here to be in any manner allowed or adjudged.

Roe *against* Doe *for five messuages with the appurtenances, in the parish of* Stepney *in the county of* Mid. *on the demise of* T. Bland *and* Con. de Golls.

By the court.

J. D. for the plt.

L. R. for the deft.

Tenants in possession appeared with filacer, and entered into common rule, which was left in prothonotary's office, intituled with true name of cause, but by mistake in body

of plea, name of plaintiff's leſſor was inſerted (as perſon complaining) inſtead of nominal plaintiff's: attorney looking upon this plea as null, ſigned judgment againſt caſual ejector, which judgment was ſet aſide with coſts as irregular, plea being properly intituled and no nullity. *Barnes* 191.

From this rule the plaintiff's attorney gets two rules drawn up by the ſecondary in the ſame manner on ſtamp paper, one for each party; this coſts 7*s.* and then the plaintiff's attorney will make up the iſſue, and deliver a copy of it, and notice of trial to the defendant's attorney; and thereupon proceed to trial as in other caſes.

Where ſeveral defts. and ſome refuſe to confeſs leaſe, entry, &c.

If there be ſeveral defendants, and at the trial the plaintiff obtains a verdict againſt ſome of the defendants, and the other defendants refuſe to confeſs leaſe, entry and ouſter, the plaintiff may ſign judgment againſt the caſual ejector as to them. *Barnes* 121, 174.

If Iſſue not paid for, judgment againſt d'ft. who appeared.

If the defendant's attorney does (*d*) not pay for the iſſue, the plaintiff's attorney may ſign judgment againſt the defendant, but not againſt the caſual ejector, *ut* (*e*) *dicitur*; but ſee the words of the rule by conſent.

(*d*) *Barnes* 176. (*e*) *Barnes* 253, *in Calcem.*

A Niſi prius *record in ejectment, with the* poſtea.

Pleas at Weſtminſter *before Sir* William De Grey, *knight, and his companions, the lord our king's juſtices of the bench, of the term of* Eaſter *in the ſeventeenth year of the reign of our ſovereign lord* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c.

Ro. 579.

Middleſex, *to wit,* *C. L.* late of the pariſh of St. *John the Baptiſt* in the precinct of the *Savoy* in the *Strand* in the county aforeſaid, gent. was attached to anſwer *R. R.* of a plea, wherefore with force and arms, five chambers and one kitchen with the appurtenances, in the precinct of the *Savoy* aforeſaid in the *Strand* in the county aforeſaid, which Sir *P. B.* bart. and *T. B.* eſq; to the aforeſaid *R.* did demiſe for a term which is not yet paſt, he the ſaid *C.* entered, and the ſaid *R.* from his farm aforeſaid ejected, and other enormities to him did, to the great damage of him the ſaid *R.* and againſt his preſent majeſty's peace. And whereupon the ſaid *R.* by *J. S.* his attorney complaineth, that whereas the aforeſaid Sir *P. B.* and *T. B.* the fifth day of *January* in the ſixth year *Declaration*

year of his preſent majeſty's reign, at the pariſh of St. *Clement Danes* in the county aforeſaid, did demiſe unto him the ſaid *R.* the tenements aforeſaid, with the appurtenances; to have and to hold the tenements aforeſaid, with the appurtenances, to the ſaid *R.* and his aſſigns, from the 11th day of *December* then laſt paſt, unto the full end and term of five years from thence next following and fully to be complete and ended: By virtue of which demiſe the ſaid *R.* into the tenements aforeſaid, with the appurtenances, did enter, and was thereof poſſeſſed; and he the ſaid *R.* ſo being thereof poſſeſſed, the aforeſaid *C.* afterwards, *to wit*, the ſame 5th day of *January* in the 6th year aforeſaid, with force and arms, *&c.* into the tenements aforeſaid, with the appurtenances, which the aforeſaid Sir *P. B.* and *T. B.* to him the ſaid *R.* in form aforeſaid had demiſed for the term aforeſaid, which is not yet paſt, did enter, and him the ſaid *R.* from his farm aforeſaid did eject, and other enormities did to the ſaid *R.* to the great damage of the ſaid *R.* and againſt the peace of his preſent majeſty; whereupon he ſaith, that he is damnified, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

Plea. And the ſaid *C. L.* by *G. H.* his attorney cometh and defendeth the force and injury by the aforeſaid *R.* againſt him charged, when and where, and in ſuch manner, as this court ſhall award, and ſaith, that he is not guilty of the treſpaſs and ejectment aforeſaid

ſaid, in ſuch manner and form as the ſaid *R. R.* hath againſt him above complained: And of this he putteth himſelf upon his country: And the aforeſaid *R.* doth ſo likewiſe, *&c.* Therefore the ſheriff is commanded to cauſe to come here in five weeks from the feaſt-day of *Eaſter* twelve good and lawful men of the body of his county, every one of whom to have 10*l.* at leaſt by the year in lands, tenements or rents, by whom the truth of the matter may be better known, and who neither are any ways related to the ſaid *R. R.* plaintiff, nor to the ſaid *C. L.* defendant, to recognize whether the ſaid *C. L.* is guilty of the premiſſes, as the ſaid *R.* above complaineth, becauſe as well the ſaid *R.* as the ſaid *C.* between whom the contention thereupon is, have put themſelves upon their country. *Award of the Venire.*

Middleſex, *to wit*, The jury between *R. R.* plaintiff, and *C. L.* late of the pariſh of St. *John Baptiſt* in the precinct of the *Savoy* in the *Strand* in the county aforeſaid, gent. in a plea of treſpaſs and ejectment of the farm, is reſpited here until on the morrow of the Holy *Trinity*, unleſs Sir *John Eardley Wilmot*, knt. chief juſtice of our lord the king of the bench here aſſigned, by form of the ſtatute in that caſe made and provided, on *Tueſday* the 8th day of *May* at *Weſtminſter* in the great hall of pleas there, commonly called *Weſtminſter-hall*, in the ſaid county, ſhall firſt come for the default of the jury, becauſe none came, therefore let the ſheriff have *Jurata.*

have the bodies of the ſeveral perſons mentioned in the panel to the writ of *Habeas corpora juratoram* annexed; and be it known,

Le ſciendum. that the juſtices thereupon here in court in the ſame term delivered a writ to the deputy of the ſheriff of the county aforeſaid, to be executed according to due form of law, *&c.*

Poſtea. Afterwards the day and place within contained, before Sir *William De Grey*, knt. chief juſtice within written, having *John Higham*, gent. for his aſſociate, by form of the ſtatute, and ſo forth, cometh the within named *R. R.* by his attorney within contained, and the within written *C. L.* altho' ſolemnly called, cometh not; therefore let the jury, whereof mention is within made, be taken againſt him by default; and the jurors of the ſaid jury being called come, who to ſpeak the truth of the within contained being elected, tried and ſworn, ſay upon their oath, that the ſaid *C.* is guilty of the treſpaſs and ejectment within mentioned, as the ſaid *R. R.* within complaineth againſt him; and they aſſeſs the damages of him the ſaid *R.* on occaſion thereof, over and above the coſts and charges which he has been put to about his ſuit in this behalf, to 1*s.* and for the ſaid coſts and charges to 20*s.* Therefore, *&c.*

	l.	*s.*	*d.*
Damages —— ——	0	1	0
Coſts —— ——	1	0	0
Increaſe —— ——	15	15	8
In all —— ——	16	16	8

Signed 30 *May* 1777.

It

Of new trials in ejectment.

It is not uſual to grant new trials in ejectment, where the verdict is for the defendant, becauſe the plaintiff may bring a new ejectment, and no other diſadvantage happens to him. But where the verdict is for the plaintiff it is otherwiſe, and new trials have been granted; for there the conſequence of not granting a new trial is the alteration of the poſſeſſion of the premiſſes in queſtion. See *Barnes* 440.

Of coſts in ejectment.

Where a verdict in ejectment is for the defendant, or the plaintiff becomes nonſuited upon evidence, a *Ca. ſa.* muſt be made out againſt the plaintiff, and ſhewed to his leſſor, and the coſts muſt be demanded thereupon of the leſſor. See *Barnes* 182.

Where the plaintiff is nonſuited by reaſon of the defendant's not confeſſing leaſe, entry and ouſter, the coſts are taxed on the rule by conſent, and judgment ſigned againſt the caſual ejector. *Barnes* 182.

Rule to tax plaintiff his coſts in ejectment, againſt one of the defendants, who did not appear on the trial, and confeſs leaſe, entry and ouſter. *Barnes* 149.

Proceedings ſtayed, till good plaintiff be named, or ſecurity to be approved by prothonotary be given by infant leſſor, for ſecuring coſts to defendant, in caſe of a nonſuit or verdict for him. *Barnes* 183. Lord chief juſtice *Willes* ſaid, he thought the court ſhould extend the rule for making a good plaintiff, or giving ſecurity for defendant's

dant's coſts, to other (*a*) caſes beſides thoſe, wherein leſſor of plaintiff is abroad, or an (*b*) infant, which are within the ordinary practice and common courſe of the court. *Barnes* 189.

When a leaſe muſt be actually ſealed on the premiſſes.

If there be no perſon in the houſe, or on the premiſſes, to deliver a declaration in ejectment to, a leaſe of ejectment muſt be ſealed at the houſe, or on the premiſſes, and the leſſee left in poſſeſſion, and ſome perſon appointed to enter and eject him; and then an action may be brought againſt ſuch ejector, and the poſſeſſion recovered. See *Barnes* 177.

Where fixing the declaration to the door of the houſe, &c. ſhall be legal ſervice.

Where half a year's rent ſhall be in arrear, the landlord, having a lawful right to reenter for non-payment, may ſerve a declaration in ejectment without a formal demand or re-entry, or, in caſe the ſame cannot be legally ſerved, *affix ſuch declaration on the door of the demiſed meſſuage, or ſome notorious place of the lands, which ſhall be deemed a legal ſervice*; and on proof that half a year's rent was due before the ſaid declaration was ſerved, and no ſufficient diſtreſs on the premiſſes, the leſſor ſhall recover judgment and execution as fully as in caſe a formal re-entry had been made; and if the leſſee ſhall ſuffer judgment to be recovered on ſuch ejectment and execution, without pay-

---

(*a*) Extended to the caſe of *death* of leſſor of plaintiff. *Barnes* 147.

(*b*) *Barnes* 177, 178.

ing

ing the arrears and coſts, and without filing a bill within ſix months after execution, he ſhall be barred from all relief in law or equity, other than by writ of error, and the leſſor ſhall hold the demiſed premiſſes diſcharged from ſuch leaſe. *Stat.* 4 *Geo.* 2. *c.* 28.

Rent was due to leſſors of plaintiff both as deviſees and executors; proceedings ſtayed on payment of the rent due to them as deviſees only with coſts, tho' rent was alſo due to them in each *(c)* capacity. *Barnes* 184.

Rent and coſts brought into court, proceedings to ſtay.

But if the tenant before trial will either tender to the leſſor, or bring into court, the rent in arrear, together with all coſts, all further proceedings ſhall ceaſe. *Same ſtat.*

Recognizances to be entered into, purſuant to *Stat.* 16 & 17 *Car.* 2. chap. 8. by plaintiff in error, are to be taken in the value of two years profits, and double coſts, and accordingly ſtayed defendant's proceedings for want of better bail, ſuch recognizances having been entered into. *Barnes* 103.

On vacant poſſeſſion may move for judgment any time in the term.

If an ejectment be brought on a vacant poſſeſſion upon this act of parliament, the plaintiff may move for judgment againſt the caſual ejector at any time in the term; the rule of *Trin.* 32 *Car.* 2. *antea. fol.* relating only to an ejectment, where the declara-

---

(c) They not being intitled to bring ejectment as *executors. Barnes* 184.

tion

tion is delivered to the tenant in poſſeſſion. *Barnes* 172.

Tenant ſecreting declaration in ejectment forfeits three years improved rent.

A tenant, to whom a declaration in ejectment ſhall be delivered for any lands, tenements or hereditaments, ſhall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack-rent of the premiſſes ſo holden in poſſeſſion of ſuch tenant, to the perſon of whom he holds. *Stat.* 11 *Geo.* 2. *c.* 19.

Landlord impowered to make himſelf defendant.

The court where ſuch ejectment ſhall be brought may ſuffer the landlord to make himſelf defendant, by joining with the tenant to whom ſuch declaration ſhall be delivered, in caſe he ſhall appear; but in caſe ſuch tenant ſhall refuſe to appear, judgment ſhall be ſigned againſt the caſual ejector for want of ſuch appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which ſuch ejectment was brought, ſhall deſire to appear by himſelf, and conſent to enter into the like rule, that by the courſe of the court the tenant in poſſeſſion, in caſe he had appeared, ought to have done, then the court ſhall permit ſuch landlord ſo to do, and order a ſtay of execution upon ſuch judgment againſt the caſual ejector, until they ſhall make further order therein. *Same ſtatute.* The word *landlord* means not every perſon claiming (*d*) title, but

(*d*) Court refuſed to make a perſon, who claimed title, defendant, inſtead of the late tenant, who had quitted the poſſeſſion. *Barnes* 195, *ad calcem.*

a perſon who is in ſome degree of poſſeſſion, as receiving rent, *&c. Barnes* 193, 194.

Motion that landlord might be *made* defendant without tenant in poſſeſſion, who refuſed to appear, denied, but common rule granted to *add* landlord to tenant. *Barnes* 172.

Motion that tenant in poſſeſſion might ſhew cauſe why he ſhould not (*e*) appear and defend his title, his landlord having tendered him an indemnity, refuſed, but enlarged the time for appearance. *Barnes* 173.

In caſes where landlord is permitted to defend without tenant, reaſon of judgment againſt caſual ejector, by *Stat.* 2 *Geo.* 2. chap. 19. is, that under it, after end of ſuit, plaintiff may obtain (*f*) poſſeſſion of premiſſes ſued for, which he could not do by virtue of a judgment againſt a perſon out of poſſeſſion. *Barnes* 208.

Landlord by *Stat.* 2 *Geo.* 2. chap. 19. is to enter into common rule by conſent, before that ſtatute, he might have been added defendant; he is to be conſidered in all reſpects, in ſame caſe as tenant in poſſeſſion. *Barnes* 187.

(*e*) Motion for landlord to defend cannot properly be made till after judgment ſigned againſt the caſual ejector, and affidavit produced of the tenant's refuſal or neglect to appear. *Barnes* 179.

(*f*) But when a writ of *error* is brought, there is not the leaſt reaſon to give plaintiff leave to take poſſeſſion, till after determination in error, *Barnes* 208.

Landlord moved to add himself to tenants; they not entring appearance, plaintiff signed judgment against casual ejector; landlord afterwards, without disclosing to court, what had been previously done, applied for conditional rule, as matter of course, and by virtue thereof appeared alone without tenants; court gave leave to take out execution on the (g) judgment. *Barnes* 186, 187.

Rules for leave to take out execution by plaintiff against casual ejector, after verdict against landlord made defendant instead of tenant in possession pursuant to *Stat.* 2 *Geo.* 2. chap. 19. be absolute in first instance, and not to shew cause. *Barnes* 185. *in calcem.*

If the plaintiff is nonsuited by default of the landlord's not appearing to confess lease, entry, *&c.* or obtains a verdict, the court, on producing the *postea*, will make an absolute rule to take out execution against the casual ejector, and not a rule to shew cause. *Barnes* 182, 183.

Rule *nisi* for setting aside *Non pros*, for not confessing lease, entry and ouster, ordered by court, on payment of costs, though regular; defendant did not confess lease, &c. because of a material variance between the

---

(g) Plaintiff offered to waive his judgment, if landlord, who resided at *Jamaica*, would give his security for the costs, but his council would not consent. *Barnes* 187.

iuste

iſſue and record; court obſerved, that confeſſion would not have been a defence, and defendant might afterwards have moved to ſet aſide the verdict for the variance. *Barnes* 175.

Writ of reſtitution ordered for late tenants in poſſeſſion; judgment being ſet aſide for irregularity, poſſeſſion ordered to be reſtored, and leſſor of plaintiff, who held the poſſeſſion, abſconding, rule became ineffectual. *Barnes* 178.

Leſſor of plaintiff and his attorney prevailing upon tenant in poſſeſſion, by undue practices, to deliver poſſeſſion of the premiſſes, (which defendant claimed as tenant's landlord) pending the ſuit, after rule obtained by defendant to be at liberty to defend his title, purſuant to *Stat.* 2 *Geo.* 2. chap. 19. (tenant refuſing to appear) and entring into common conſent rule, held no contempt of the court, but a fraud, which (*b*) ought to be prevented, and is not remedied by ſaid act. *Barnes* 180.

Hab. (*i*) *corp.* is the proper proceſs to remove a plaintiff from the mayor's court in *London*, and not a *certiorari*. *Barnes* 421.

(*b*) Tenants ſhould be bound not to change the poſſeſſion. *Barnes* 180.

(*i*) Under which defendant muſt appear in this court, and enter into the common rule, and plaintiff muſt declare *de novo*. *Barnes* 421.

Habere facias poſſeſſionem.

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *J. M.* lately in our court, before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court, recovered his term yet to come of and in the manor of *S.* with the appurtenances, and 10 meſſuages, 500 acres of land, 100 acres of meadow, 300 acres of paſture, with the appurtenances in *S.* in your county, againſt *L. C.* late of, *&c.* which *J. C.* gentleman, on the 1ſt day of *October* in the —— year of our reign, demiſed to the ſaid *J. M.* to hold and enjoy to the ſaid *J. M.* and his aſſigns, from the feaſt of Saint *Michael* the archangel then laſt paſt, unto the full end and term of ſeven years thence next enſuing, and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *L.* put out and amoved the ſaid *J. M.* from his poſſeſſion, and ejected him from his ſaid farm: Therefore we command you, that you cauſe the ſaid *J. M.* to have his poſſeſſion of his ſaid term yet to come of and in the ſaid manor and tenements aforeſaid, with the appurtenances; and how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* in eight days of the Purification of the bleſſed *Mary*; and have there this writ. Witneſs, *&c.*

	s.	*d.*
Signing	1	4
Seal	0	7
	1	11

If on a double or treble demiſe, you pay 8d. *for each demiſe after the firſt.*

Habere facias poſſeſſionem, *and a* Fi. fa.'

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *W. D.* gentleman, lately in our court before our juſtices at *Weſtminſter*, by the conſideration of the ſaid court recovered againſt *S. F.* late of, *&c.* his term yet

to

to come of and in one meſſuage and 14 acres of land, with the appurtenances, in *L.* in your county, which *S. J.* and *E. J.* on the firſt day of *October* in the year of our Lord ——, at *L.* aforeſaid, demiſed to the ſaid *W.* to hold and enjoy the ſaid tenements with the appurtenances, to him and his aſſigns, from the ——— day of —— then laſt paſt, unto the end and term of three years thence next enſuing, and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *S.* put out and amoved the ſaid *W.* from his poſſeſſion, and ejected him from his ſaid farm, therefore we command you, that without delay you cauſe the ſaid *W.* to have his poſſeſſion of his term aforeſaid of and in the ſaid meſſuage and tenements, with the appurtenances; and how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* in eight days of the Purification of the bleſſed *Mary*. We alſo command you, that of the goods and chattels of the ſaid *S.* in your bailiwic, you cauſe to be made eleven pounds, which were adjudged to the ſaid *W.* in our ſaid court for his damages, which he had by reaſon of the treſpaſs and ejectment aforeſaid, and have that money before our juſtices at *Weſtminſter* at the ſaid time, to render to the ſaid *W.* for his damages aforeſaid, whereof the ſaid *S.* is convicted; and have there this writ. Witneſs, *&c.*

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *A. G.* lately in our court before

Habere facias poſſeſſionem *for executor*

after a Sci. fa.'

fore our juſtices at *Weſtminſter*, by the conſideration of the ſaid court recovered his term of and in one meſſuage, 28 acres of land, five acres of meadow, and 17 acres of paſture, with the appurtenances, in *C.* in your county, againſt *D. B.* late of, *&c.* merchant, which *W. N.* on the 1ſt day of *April* in the ——— year of our reign, at *C.* aforeſaid, demiſed to the ſaid *A.* to hold and enjoy to him and his aſſigns from the feaſt of the Annunciation of the bleſſed virgin *Mary* then laſt paſt, unto the end and term of three years thence next enſuing, and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *D.* put out and amoved the ſaid *A.* from his poſſeſſion, and ejected him from his ſaid farm therein, which ſaid *A.* after the ſaid judg-

Sci. fa.'

ment was given, died, after whoſe death it is conſidered in our ſaid court, that *C. W.* and *R. S.* executors of the teſtament and laſt will of the ſaid *A.* have execution againſt the ſaid *D.* of the term aforeſaid yet to come of and in the ſaid tenements with the appurtenances, by the default of the ſaid *D.* We therefore command you, that without delay you cauſe the ſaid *C.* and *R.* to have poſſeſſion of the ſaid term yet to come of and in the ſaid tenements, with the appurtenances: And how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* from the day of the Holy *Trinity* in three weeks; and have there this writ. Witneſs, *&c.*

Rule *Niſi*, why writ of *Hab. Fac. Poſſ.* ſhould not be ſet aſide, and poſſeſſion reſtored,

ſtored, *&c.* diſcharged; it appearing, that after plaintiff had obtained judgment, defendant brought writ of error, which was allowed, but entered into no recognizance, nor put in any (*k*) bail thereon, plaintiff previous to his procuring (*l*) coſts to be taxed on the final judgment, for want of defendant's entering into recognizance, required by (*m*) *ſtat.* 16 & 17 *Car.* II. *chap.* 8. or bail within four days, took out writ of *Hab. Fac. Poſſ.* and by virtue thereof, took poſſeſſion of premiſſes late in queſtion, which the court held to be regular. *Barnes* 212.

(*k*) Writ of error is no *Superſedeas* without bail, which judge would have taken, if applied to. *Barnes* 212.

(*l*) Defendant ſhould have applied to ſtay execution, and the court would have obliged plaintiff to have procured his coſts to be taxed, without which the meaſure or quantum of the recognizance could not be aſcertained. *Barnes* 212.

(*m*) See 2 *Ventr.* 170.

COSTS for DEFENDANT in EJECTMENT.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions	0	0	0	0	2	2	0	4	4
Appearance	0	2	0	0	3	8	0	5	4
Searching if judgment moved for	0	0	0	0	1	8	0	3	4
Copy declaration fol. 7	0	0	0	0	1	8	0	3	4
Common rule	0	0	0	0	0	6	0	1	0
General iſſue and rule	0	0	0	0	2	2	0	4	4
Paid for iſſue per ſheet beſides duty and warrant	0	0	4	0	0	4	0	0	4
Half conſent rule	0	2	6	0	2	6	0	2	6
Copy iſſue fo. 9	0	0	0	0	1	6	0	3	0
Inſtructions for brief	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	2	6	0	5	0
Letters	0	0	0	0	1	0	0	2	0

Of writs of Scire facias.

A *Scire facias* is a judicial writ, and properly lies where one has recovered debt or damages, and has not ſued out execution within the year and a day. It alſo lies on a recognizance of bail; and in many other caſes it is called a *Scire facias*, becauſe of the words of the writ to the ſheriff, *viz.* *Quod Scire facias præfat. D.* the defendant, *quod ſit coram*, &c. *oſtenſurus ſi quid pro ſe habeat aut dicere ſciat quare*, &c. ſo as by this writ it appears that the defendant is to be warned to plead any matter in bar of execution; and therefore although it be a judicial writ, yet, becauſe the defendant may plead thereto, this *Scire facias* in law is accounted in nature of an action.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. Whereas *J. R.* lately in our court, *to wit*, in the term of St. *Hilary* in the —— year of our reign, before Sir *John Eardley Wilmot*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court recovered againſt *H. N.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of forty pounds as ſixty-three ſhillings, which were adjudged to the ſaid *J. R.* in our ſame court for his damages which he had by occaſion of the detaining that debt, whereof

Sci. fa.' *after a year and a day.*

	s.	d.
Duty	2	0
Signing	1	4
Seal	0	7

the ſaid *H.* is convicted, as by the record and proceedings thereof remaining in our ſame court before our juſtices at *Weſtminſter* manifeſtly appeareth; *yet* execution of the ſaid judgment ſtill remaineth to be made, as on the information of the ſaid *J. J.* we have been given to underſtand; and becauſe we are willing that thoſe things which in our ſame court are rightly acted be demanded by a due execution, we command you, that, by good and lawful men of your bailiwic, you make known to the ſaid *H.* that he be before our juſtices at *Weſtminſter*, on [*the return*] to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *J.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the ſaid recovery, if it ſhall ſeem expedient to him; and have there the names of them, by whom you ſhall make known to him, and this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the ——— day of, *&c.*

Note; If the plaintiff has within the year and day ſued out an execution, got it returned and filed, and continued it on the roll by *Vic' non miſit breve*, it is ſufficient to warrant an execution after the year and day.

In this caſe one *Scire facias*, with a *Nihil* returned, is ſufficient.

This writ is to be ſigned by the prothonotary; then it is to be delivered to the ſheriff, and when returned, it muſt be entered on the protho-

prothonotary's remembrance, and a rule muſt be given; after the rule is out, you ſign and docket the judgment, and enter it up in manner following:

Entry *of judgment on a* Scire facias.

Middleſex, *to wit*, The ſheriff was commanded, whereas *J. R.* lately in the court of our lord the now king, *to wit*, in the term of St. *Hilary* in the twelfth year of the reign of our ſaid lord the king, before Sir *Eardley Wilmot*, knight, and his companions, then juſtices of our ſaid lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *H. N.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of 40 *l.* as 63 *s.* which was adjudged to the ſaid *J.* in the ſame court for his damages which he had by occaſion of the detaining that debt whereof the ſaid *H.* is convicted, as by the record and proceedings thereof remaining in the ſame court of our ſaid lord the now king here, *to wit*, at *Weſtminſter* aforeſaid, manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, as on the information of the ſaid *J.* the king hath been given to underſtand; and becauſe, *&c.* That by good, *&c.* he make known to the ſaid *H.* that he be here at *Weſtminſter* at this day, *to wit*, [*the return*] to ſhew if any thing, *&c.* why the ſaid *J.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *J.* by *L. R.* his attorney, and

and offered himſelf on the fourth day againſt the ſaid *H.* in the plea aforeſaid, and he being ſolemnly demanded came not; and the ſheriff now ſendeth, that he hath nothing, *&c.* nor is he found, *&c.* It is therefore conſidered that the ſaid *J.* have execution againſt the ſaid *H.* for the debt and damages aforeſaid, by default of the ſaid *H. &c.*

	s.	d.
Duty	2	0
Signing writ	1	4
Seal	0	7
Return	1	0
Rule and duty	1	6
Signing judgment	2	0
Filing warrant	0	4
	8	9

Scire facias *in debt for an adminiſtrator.*

GEORGE the third, *&c.* To, *&c.* Whereas *H. S.* lately in our court, *to wit*, in the term of St. *Hilary* in the 13th year of our reign, before Sir *John Eardley Wilmot*, knt. and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *N. C.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of 200*l.* as 63*s.* which in our ſaid court were adjudged to the ſaid *H.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *N.* is convicted, as by the record and proceedings thereof remaining in our ſaid court manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *H.* is dead,

dead, as on the information of *W. S.* widow, adminiſtratrix of all the goods and chattels which were of the ſaid *H.* at the time of his death, we have been given to underſtand; and becauſe we are willing that thoſe things which in our ſaid court have been rightly acted ſhould be demanded by a due execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *N.* that he be before our juſtices at *Weſtminſter* on [*the return*] to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *W.* ought not to have execution againſt him, *&c. ut antea, fol.* 376.

Entry of a Scire facias in debt by an executor.

——*to wit*, The ſheriff was commanded, [*ut antea, fol.* 377.] yet execution ſtill remaineth to be made, and the ſaid *W.* is dead, as on the information of *R. W.* executor of the teſtament of the ſaid *W.* the king hath been informed; and becauſe, *&c.* by good, *&c.* make known to the ſaid *B.* [*ut antea, fol.* 377, 378.] And now here at this day came the ſaid *R.* by *J. S.* his attorney, and offered himſelf on the 4th day againſt the ſaid *B.* in the plea aforeſaid, and the ſaid *B.* being ſolemnly demanded came not; and the ſheriff now returneth, that he hath nothing, *&c.* nor is he found, *&c.* And upon this the ſaid *R.* bringeth here into court the letters teſtamentary of the ſaid *W.* by which it ſufficiently appeareth to the court here, that the ſaid *R.* is executor of the teſtament of the ſaid *W.* and thereof hath the adminiſtration, *&c.* and he prayeth execution againſt the

Nihil *return'd.*

Profert.

the ſaid *B.* of the debt and damages aforeſaid in form aforeſaid to be adjudged to him, *&c.*

Judgment. It is therefore conſidered that the ſaid *R.* have execution againſt the ſaid *B.* of the debt and damages aforeſaid, by the default of the ſaid *B. &c.*

Entry of a Sci-re facias *in caſe againſt an adminiſtrator.*

——*to wit*, The ſheriff was commanded, whereas *R. G.* lately in the court of our lord the king here, *to wit*, in the term of St. *Hilary* in the firſt year of his reign, before Sir *John Eardley Wilmot*, knt. and his companions, then juſtices of our lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *P. G.* late of *Southwark* in the county of *Surrey*, dyer, 18*l.* which to the ſaid *R.* in the ſame court of our lord the king now here, were adjudged for his damages, which he had by occaſion of the not performing certain promiſes and undertakings made by the ſaid *P.* in his life-time to the ſaid *R.* whereof the ſaid *P.* was convicted, as by the record and proceedings thereof remaining in the ſame court of our lord the king now here, *to wit*, at *Weſtminſter* aforeſaid, manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *P.* is dead, as on the information of the ſaid *R.* the king hath been informed; and becauſe, *&c.* that by good, *&c.* he ſhould make known to *A. G.* widow, adminiſtratrix (*n*) of the goods and

(*n*) Held upon argument of demurrer, that the calling defendant adminiſtrator in the declaration is a ſufficient averment of his being ſo, without ſetting out, that adminiſtration was committed to him. *Barnes* 159.

chattels which were of the ſaid *P.* who died inteſtate, *&c.* that ſhe be here at this day, *to wit*, on the morrow of *All Souls*, to ſhew if any thing, *&c.* why the ſaid *R.* ought not to have execution againſt her of the damages aforeſaid, of the goods and chattels which were of the ſaid *P.* at the time of his death, being in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much in her hands, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *R.* by *L. R.* his attorney, and offered himſelf on the 4th day againſt the ſaid *A.* in the plea aforeſaid, and ſhe being ſolemnly demanded came not; and the ſheriff now returneth that ſhe hath nothing, *&c.* nor is ſhe found, *&c.* Therefore, *as before*, the ſheriff was commanded, that by good, *&c.* he ſhould make known to the ſaid *A.* that ſhe ſhould be here at this day, *to wit*, on the [*the return*] to ſhew in form aforeſaid; at which day came the ſaid *R.* by his ſaid attorney; and hereupon the ſaid *A.* on the 4th day of the plea being ſolemnly demanded came not; and the ſheriff, *as before*, returneth that ſhe hath nothing, *&c.* nor is ſhe found, *&c.* and upon this the ſaid *R.* ſaith that after the judgment aforeſaid rendered the ſaid *P.* died inteſtate, and that adminiſtration of the goods and chattels which were of the ſaid *P.* at the time of his death, after the death of the ſaid *P.* was committed to the ſaid *A.* at *Southwark* aforeſaid; and the ſaid *R.* prayeth execution againſt the ſaid *A.* of the damages aforeſaid, of the goods and chattels

Return Nihil.

Alias ſci. fa.

Return Nihil.

chattels which were of the ſaid *P.* at the time of his death, being in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much thereof in her hands. It is therefore conſidered that the ſaid *R.* have execution againſt the ſaid *A.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *P.* at the time of his death in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much thereof in her hands, *&c.* by the default of the ſaid *A. &c.*

Judgment.

Entry of a Scire facias *in debt againſt executors, and two* Nihils *returned.*

London, *to wit*, The ſheriffs were commanded, whereas *R. F.* [*as before, to*] Yet execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *T.* is dead, as on the information of the ſaid *R.* the king has been informed; and becauſe, *&c.* that by good, *&c.* they make known to *A. J.* widow, and *M. J.* executors of the teſtament of the ſaid *T.* that they be here at this day, *to wit*, from the day of *Eaſter* in 15 days to ſhew if any thing, *&c.* why the ſaid *R.* ought not to have execution againſt them of the debt and damages aforeſaid, of the goods and chattels of the ſaid *T. J.* at the time of his death, in their hands to be adminiſtered, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *R.* by *W. E.* his attorney; and the ſaid *A.* and *M.* on the fourth day of the plea being ſolemnly demanded came not; and the ſheriffs now return, that the ſaid *A.* and *M.* have nothing, *&c.* nor are they found, *&c.* Therefore, *as before*, the ſheriffs are commanded,

manded, that by good, &c. they make known to the ſaid *A.* and *M.* that they be here from the day of *Eaſter* in five weeks to ſhew in form aforeſaid; at which day here came as well the ſaid *R.* by his attorney aforeſaid, as the ſaid *A.* and *M.* by *F. K.* their attorney; and the ſheriffs now return that they have nothing, &c. nor are they found, &c. *ut antea.*

Where one Sci. fa. *return'd* Nihil *is ſufficient.*

In caſe of the death of either party judgment muſt be revived by *Scire facias.* In caſe of the death of the defendant you muſt have a *Scire feci* or two *Nihils* return'd; but in caſe of the plaintiff's death one *Nihil* is ſufficient.

Where if plaintiff or defendant dies after interlocutory, and before final judgment, proceedings may be received by Scire facias.

In all actions in this court, if any plaintiff ſhall happen to die after any interlocutory judgment, and before final judgment, the action ſhall not abate if ſuch action might be originally maintained by the executors or adminiſtrators of ſuch plaintiff; and if the defendant die after interlocutory judgment, and before final judgment, the action ſhall not abate, if ſuch action might be originally proſecuted againſt the executors or adminiſtrators of ſuch defendant; and the plaintiff, or his executors or adminiſtrators ſhall have a *Scire facias* againſt the defendant, his executors or his adminiſtrators, to ſhew cauſe why damages in ſuch action ſhould not be aſſeſſed and recovered; and if ſuch defendant, &c. ſhall appear at the return of ſuch writ, and not alledge matter ſufficient to arreſt the final judgment, or (being returned

warned, or upon two writs of *Scire facias* it be returned, that the defendant, *&c.* had nothing, *&c.*) ſhall make default, a writ of inquiry ſhall be awarded, which being executed and returned, final judgment ſhall be given. *Stat.* 8 *&* 9 *W.* 3. *c.* 9. *ſect.* 6, 15.

A Scire facias *where the plaintiff died after interlocutory judgment, and before final judgment.*

GEORGE the third, *&c.* To the ſheriffs of *London*, greeting. Whereas *G. K.* in his life-time, lately in our court, *to wit*, in the term of *Eaſter* in the 7th year of our reign, before Sir *John Eardley Wilmot*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, by our writ had impleaded *M. G.* late of *London*, widow, declaring in the ſame plea againſt her, that whereas the ſaid *M.* [*ſetting forth the whole declaration to*] and thereof he brought ſuit, *&c.* And it was proceeded in our ſame court in ſuch manner, that in the term of the holy *Trinity* in the 6th and 7th years of our reign, by the ſame court it was conſidered, that the aforeſaid *G.* ought to have recovered his damages againſt the ſaid *M.* occaſioned by not performing the promiſes and undertakings aforeſaid. But becauſe it was not known what damages the ſaid *G.* had ſuſtained on occaſion of not performing the promiſes and undertakings aforeſaid; therefore the ſheriffs of *London* were commanded, that by the oath of good and lawful men of their bailiwic they ſhould diligently inquire, what damages the ſaid *G.* had ſuſtained, as well on occaſion of the not performing the promiſes and undertakings afore-

Recital of the interlocutory judgment.

And award of inquiry.

aforeſaid, as for his coſts and charges by him about his ſuit in that behalf laid out; and the inquiry which the ſheriffs ſhould thereof make, they ſhould make manifeſt to our juſtices at *Weſtminſter* aforeſaid, from the day of St. *Michael* in three weeks then next following, under the ſeal, *&c.* and the ſeals, *&c.* as by the record and proceſs thereof remaining, in our ſame court, *to wit*, at *Weſtminſter* aforeſaid, may plainly appear. The inquiry nevertheleſs of the damages aforeſaid yet remaineth to be made, and the aforeſaid *G.* at *London* aforeſaid made his teſtament and laſt will in writing, and thereby conſtituted and appointed *E. K.* his wife ſole executrix thereof; and afterwards, and after the judgment aforeſaid given at *London* aforeſaid died, after whoſe death the ſaid *G.* proved the ſaid teſtament in due form of law, and took the burthen of the execution of that teſtament upon her, as by the letters teſtamentary thereof here in court by the ſaid *E.* produced to our juſtices ſufficiently appeareth; and becauſe we will thoſe things which in our ſame court are rightly acted be duly carried into execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *M.* that ſhe be before our juſtices at *Weſtminſter* on the morrow of St. *Martin*, to ſhew if ſhe hath, or knoweth any thing to ſay for herſelf, why the damages aforeſaid by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, ſhould not be

Death of plaintiff, executrix proves his will.

Profert.

Sci. fa.

aſſeſſed and adjudged to the ſaid *E.* according to the form of the ſtatute in this caſe lately made and provided, if to her it ſhall ſeem expedient; and have you there the names of them by whom you ſhall make it known to her, and this writ. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the 20th day of *October* in the 7th year of our reign.

If a *Nihil* be returned, according to the above ſtatute, an *Alias ſcire facias* muſt iſſue; you muſt enter them *verbatim* in the prothonotary's remembrance roll, and give a rule.

Entry of the above Scire facias.

Firſt Scire facias *roll.*

London, *to wit*, The ſheriffs were commanded, whereas *G. K.* lately in the court of our lord the now king, *to wit*, in *Eaſter* term the 7th year of the reign of our ſaid lord the king, before Sir *John Eardley Wilmot* knt. and his companions, then juſtices of our ſaid lord the king of the bench here, *to wit*, at *Weſtminſter*, by the writ of our ſaid lord the king, had impleaded *M. G.* late of *London*, widow, declaring in the ſame plea againſt her, that whereas [*ſetting forth the whole declaration, as in the* Sci. fa.] And it was proceeded in the ſame court of our ſaid lord the king in ſuch manner, that in the term of the holy *Trinity* in the 6th and 7th years of the reign of our ſaid lord the king, by the ſame court it was conſidered, that the aforeſaid *G.* ought to have recovered his damages againſt the ſaid *M.* occaſioned by not performing the premiſes and undertakings aforeſaid:

ſaid: But becauſe its was not known what damages the ſaid *G.* had ſuſtained on occaſion of not performing the ſaid promiſes and undertakings, therefore the then ſheriffs were commanded, that by the oath of good and lawful men of their bailiwic they ſhould diligently inquire what damages the ſaid *G.* had ſuſtained, as well on occaſion of the not performing the promiſes and undertakings aforeſaid, as for his coſts and charges by him about his ſuit in that behalf laid out; and the inquiry which the ſheriffs ſhould thereof make, they ſhould make manifeſt to the juſtices of our ſaid lord the king, *to wit*, at *Weſtminſter* aforeſaid, from the day of Saint *Michael* in three weeks then next following, under the ſeal, *&c.* and the ſeals, *&c.* as by the record, and proceſs thereof in the ſame court of our ſaid lord the king here, *to wit*, at *Weſtminſter* aforeſaid remaining, may plainly appear. The inquiry nevertheleſs of the damages aforeſaid yet remaineth to be made, and the ſaid *G.* at *London* aforeſaid made his teſtament and laſt will, and thereby conſtituted and appointed *E. K.* his wife ſole executrix thereof; and afterwards, and after the judgment aforeſaid given at *London* aforeſaid, died, after whoſe death the ſaid *E.* proved the ſaid teſtament in due form of law, and took the burden of the execution of that teſtament upon her, as by the letters teſtamentary thereof here, *to wit*, at *Weſtminſter* aforeſaid, by the ſaid *E.* produced to the ſaid juſtices of our ſaid lord the king ſufficiently appeareth. And becauſe, *&c.* that

by good, *&c.* the ſaid ſheriffs ſhould make known to the ſaid *M.* that he ſhould be here at this day, *to wit*, on the morrow of St. *Martin*, to ſhew if any thing, *&c.* why the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, ſhould not be aſſeſſed and adjudged to the ſaid *E.* according to the form of the ſtatute in this caſe lately made and provided, *if*, *&c.* And now here at this day, *to wit*, on the morrow of St. *Martin* aforeſaid, cometh the aforeſaid *E.* by *W. T.* her attorney, and hath offered herſelf the fourth day againſt the ſaid *M.* in the plea aforeſaid; and the ſaid *M.* being ſolemnly called cometh not; and the now ſheriffs do return, that ſhe hath nothing, *&c.* nor is to be found, *&c.* Therefore, as before, the ſheriffs are commanded, that by good, *&c.* they make known to the ſaid *M.* that ſhe be here in eight days of St. *Hilary*, to ſhew in manner aforeſaid.

Return Nihil.

Second Scire facias *roll.*

London, *to wit*, Heretofore, as it appeareth in this ſame term, in the roll it is thus contained, *to wit*, London, *to wit*, The ſheriffs were commanded [*the laſt entry* verbatim, *and then go on.*] At which day here cometh the ſaid *E.* by *W. T.* her ſaid attorney, and hath offered herſelf the fourth day againſt the ſaid *M.* in the plea aforeſaid; and the ſaid *M.* being ſolemnly called cometh not; and the ſheriffs, as before, do return, that ſhe hath nothing, *&c.* nor

Return Nihil.

nor is to be found, *&c.* And hereupon the ſaid *E.* prayeth, that the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, may be aſſeſſed and adjudged unto her: Therefore it is conſidered, that the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid ſuſtained, be aſſeſſed and adjudged unto the ſaid *E.* according to the form of the ſtatute in that caſe made and provided, by default; and becauſe it is ſtill unknown what damages the ſaid *G.* hath ſuſtained by reaſon of the premiſſes aforeſaid; therefore, as before, the ſheriffs are commanded, that by the oath of good and lawful men of their bailiwic, they diligently inquire what damages the ſaid *G.* hath ſuſtained, as well by reaſon of the ſaid premiſſes, as for his coſts and charges by him laid out about his ſuit in that behalf; and the inquiſition which they ſhall thereupon make, that they make manifeſt to the juſtices of the lord the king here, *to wit*, at *Weſtminſter* aforeſaid, in eight days of the purification of the bleſſed *Mary*, under the ſeal, *&c.* and the ſeals, *&c.* At which day here cometh the ſaid *E.* by her ſaid attorney, and the ſheriffs, *to wit*, Sir *George Champion*, knight, and *Robert Cater*, eſq; now return here a certain inquiſition taken before them at *Guildhall* in the pariſh of St. *Lawrence Jewry* in the ward of *Cheap* of the ſame city, on the 4th day of *February* laſt paſt, by the oath of 12, *&c.* by which

Judgment that damages be aſſeſſed.

Inquiry awarded.

Return of inquiry.

it is found, that the ſaid *G.* by reaſon of the premiſſes ſuſtained damages, beſides his coſts laid out by him about his ſuit in that behalf to 105 *l.* and for his coſts and charges aforeſaid to 27 *s.* 4 *d.* Therefore it is conſidered, that the ſaid *E.* as executrix aforeſaid, do recover againſt the ſaid *M.* the ſaid damages to 106 *l.* 7 *s.* 4 *d.* found by the ſaid inquiſition in manner aforeſaid; and alſo 11 l. 2 *s.* 8 *d.* adjudged by the court here to the ſaid *E.* at her requeſt, for the increaſe of the coſts and charges aforeſaid; which ſaid damages amount in the whole to 117 *l.* 10 *s.* And the ſaid *M.* in mercy, *&c.* —— *H.* 11. *G.* 2. *Ro.* 341.

Judgment ſigned 17 Apr. 1737.

Mercy.

Entry of Scire facias *againſt bail.*

Note; the firſt writ is made out by the filacer.

The ſecond Sci. fac. *is ſigned by the prothonotary.*

Middleſex, *to wit*, The ſheriff was commanded, whereas *J. H.* of, *&c.* and *S. A.* of, *&c.* lately, that is to ſay, in *Michaelmas* term in the 7th year of the reign of our ſovereign lord the now king before Sir *John Eardley Wilmot*, knt. and his companions, then our ſaid lord the king's juſtices of the bench at *Weſtminſter*, came in their proper perſons, and acknowledged, and each of them by himſelf acknowledged, to owe to *H. D.* the ſum of 110 *l.* which ſaid ſum of 110 *l.* they the ſaid *J.* and *S.* for themſelves and their heirs willed and granted, and each of them, for himſelf and his heirs, willed and granted to be made of their and each of their land, and chattels, and to be levied to the uſe and behoof of the ſaid *H.* And whereas *J. H.* of, *&c.* lately, that is to ſay, in the ſame *Michaelmas* term in the 7th year aforeſaid, in the

ſaid

ſaid court of our ſaid lord the king, before Sir *John Eardley Wilmot*, knt. and his companions, then our ſaid lord the king's juſtices of the bench at *Weſtminſter*, came in his proper perſon, and acknowledged himſelf to owe to the ſaid *H. D.* the ſum of 220*l.* which ſaid ſum of 220*l.* the ſaid *J. H.* for himſelf and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the uſe and behoof of the ſaid *H.* under this condition, that if judgment ſhould happen to be given for the ſaid *H.* againſt the ſaid *J. H.* in the ſame court, in a certain plea of debt upon demand, for 124*l.* proſecuted in the ſame court by the ſaid *H.* againſt the ſaid *J. H.* that then the ſaid *J. H.* would ſatisfy the ſaid *H.* his ſaid debt and damages on occaſion of detaining the ſaid debt to be adjudged to the ſaid *H.* againſt the ſaid *J. H.* in the ſame court in the plea aforeſaid, or render his body on that occaſion to the priſon of our ſaid lord the king of the *Fleet*; and although the ſaid *H.* afterwards, that is to ſay, in the ſame *Michaelmas* term in the ſaid 7th year of the reign of our ſaid lord the king, in the ſame court, before the ſaid Sir *John Eardley Wilmot*, knt. and his companions, then our ſaid lord the king's juſtices of the bench aforeſaid, by the judgment and conſideration of the ſame court, recovered againſt the ſaid *J. H.* as well his ſaid debt of 124*l.* as 16*l.* 10*s.* which were adjudged to the ſaid *H.* in the ſame court for his damages, which he had on occaſion of detaining that debt, whereof the

the ſaid *J. H.* is convicted, as by the record and proceedings thereof now remaining in the ſame court at *Weſtminſter* aforeſaid is manifeſtly apparent. Nevertheleſs the ſaid *J. H.* hath not yet ſatisfied the ſaid *H.* for his debt and damages aforeſaid, nor rendered his body on that occaſion to the ſaid priſon of the *Fleet*, according to the form of the ſaid recognizance, as our ſaid lord the king has received information from the ſaid *H.* And becauſe, *&c.* that by good, *&c.* he ſhould make known to the ſaid *J. H. J. H.* and *S.* that they be here at this day, that is to ſay, on the morrow of the holy *Trinity*, to ſhew if any thing, *&c.* that is to ſay, the ſaid *J. H.* why the ſaid 110*l.* by him in form acknowledged ſhould not be made of his lands and chattels; and the ſaid *S.* why the ſaid 110*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels; and the ſaid *J. H.* why the ſaid 220*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels, and levied to the uſe and behoof of the ſaid *H.* according to the form of the ſaid recognizance, if, *&c.* And now at this day the ſaid *H.* cometh here by *L. R.* his attorney, and offered himſelf on the fourth day againſt the ſaid *J. H. S.* and *J. H.* in the plea aforeſaid; and they, though ſolemnly called, came not; and the ſheriff now returneth, that the ſaid *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, *&c.* nor are they, nor is any of them found, *&c.* Therefore, as before, the ſheriff was commanded,

Return Nihil.

Alias awarded.

manded, that by good, &c. he ſhould make known to the ſaid *J. H. S.* and *J. H.* that they be here from the day of the holy *Trinity* in three weeks, to ſhew in form aforeſaid; at which day the ſaid *H.* cometh here by his attorney aforeſaid, and offered himſelf on the fourth day againſt the ſaid *J. H. S.* and *J. H.* in the plea aforeſaid, and they, though ſolemnly called, come not; and the ſheriff, as before, now returneth, that the ſaid *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c. And thereupon the ſaid *H.* prayeth execution againſt the ſaid *J. H. S.* and *J. H. to wit*, againſt the ſaid *J. H.* of the ſaid 110*l.* by him in form aforeſaid acknowledged, and againſt the ſaid *S.* of the ſaid 110*l.* by him in form aforeſaid acknowledged, and againſt the ſaid *J. H.* of the ſaid 220*l.* by him in form aforeſaid acknowledged, according to the form of the recognizance, to be adjudged to him, &c. Therefore it is conſidered, *Judgment.* that the ſaid *H.* have execution againſt the ſaid *J. H. S.* and *J. H.* that is to ſay, againſt the ſaid *J. H.* of the ſaid 110*l.* by him in form aforeſaid acknowledged; and againſt the ſaid *S.* of the ſaid 110*l.* by him in form aforeſaid acknowledged; and againſt the ſaid *J. H.* of the ſaid 220*l.* by him in form aforeſaid acknowledged, by default, &c.

GEORGE, &c. To the ſheriff of *Middleſex*, greeting. Whereas *S. N.* of the city of *Coventry* in the county of the ſame city, cordwainer, and *J. S.* of the ſame city in the

Sci. fa. *againſt bail on a* Habeas corpus *upon a recognizance taken before a com-*

miſſioner, defendant in perſon.

the county of the ſame city, farrier, heretofore, *to wit*, on the fourth day of *May* in the ——— year, *&c.* before *S. W.* eſq; one of the commiſſioners by our juſtices at *Weſtminſter* appointed, according to the form of the ſtatute in this caſe lately made and provided, became bail, and each of them became bail for *J. F.* in the ſum of 50 *l.* And whereas the ſaid *J. F.* on the ſame 4th day of *May* in the ——— year of, *&c.* aforeſaid, before the ſame commiſſioner acknowledged, that he owed to *B. C.* the ſum of 100 *l.* Which ſaid ſum of 50 *l.* the ſaid *S.* and *J.* acknowledged, and each of them acknowledged to be made of their, and each of their lands and chattels; and which ſaid ſum of 100 *l.* the ſaid *J. S.* acknowledged to be made of his lands and chattels, and levied to the uſe and behoof of the ſaid *B.* upon this condition, that the ſaid *J. F.* ſhould appear in our court before our juſtices at *Weſtminſter*, at the ſuit of the ſaid *B.* in a certain plea of treſpaſs and aſſault to the damage of 50 *l.* And if in our ſame court judgment ſhould happen to be given in the ſame plea for the ſaid *B.* againſt the ſaid *J. F.* then the ſaid *J. F.* ſhould ſatisfy all the damages which ſhould be adjudged to the ſaid *B.* in our ſame court in the plea aforeſaid, or render his body on that occaſion to the priſon of the *Fleet*, as by the record and proceedings thereof remaining in our ſame court manifeſtly appeareth. And although the ſaid *B.* in the term of *Eaſter* in the ——— year of, *&c.* before Sir ——, knight, and his companions,

Stat. 4 W. & M. c. 4.

panions, our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court recovered againſt the ſaid *J. F.* 19*l.* which in our ſame court were adjudged to the ſaid *B.* for his damages which he had by occaſion of the ſaid treſpaſs and aſſault whereof the ſaid *J. F.* is convicted, as by the record and proceedings thereof in our ſame court alſo remaining manifeſtly appeareth; *Yet* the ſaid *J. F.* hath not ſatisfied the ſaid damages to the ſaid *B.* nor rendered his body on that occaſion to the ſaid priſon of the *Fleet*, according to the form of the ſaid recognizance, as from the information of the ſaid *B.* we have been given to underſtand. And becauſe we will that thoſe things which in our ſaid court are rightly acted and acknowledged, be brought to a due execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *S. J. S.* and *J. F.* that they be before our juſtices at *Weſtminſter* on [*the return*] to ſhew if any thing they have, or know to ſay for themſelves, *to wit*, to the ſaid *S.* why the ſaid 50*l.* by him in form aforeſaid acknowledged ought not to be made of his lands and chattels; to the ſaid *J. S.* why the ſaid 50*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels; and to the ſaid *J. T.* why the ſaid 100*l.* by him in form aforeſaid acknowledged ſhould not be made of his lands and chattels, and be levied to the uſe and behoof of the ſaid *B.* according to the form of the ſaid recognizance, if it ſhall ſeem expedient to him; and

have there the names of them by whom you ſhall make known to them, and this writ. Witneſs, *&c.*

Intrat. Scire fieri & inquir'. *Award of* Fi. fa. *in debt for executors againſt an executrix.*

Cambridge, *to wit*, The ſheriff was commanded, that of the goods and chattels which were of *Henry Cromwell*, eſq; deceaſed, lately called *Henry Cromwell* of *Wicken* in the county of *Cambridge*, eſq; in the hands of *Elizabeth Cromwell* late of *Spunny* in the county aforeſaid, widow, executrix of the teſtament of the ſaid *Henry* to be adminiſtered, being in his bailiwic, he ſhould cauſe to be made as well a certain debt of 200*l.* which *Chriſtopher Wynne*, eſq; and *Sarah* his wife, *Thomas Percival*, gentleman, and *Mary* his wife, and *Thomas Balls*, gentleman, which ſaid *Sarah*, *Mary*, and *Thomas Balls*, were executors of the teſtament of *George Balls*, gentleman, deceaſed, in the court of our lord *Charles* the ſecond, late king of *England*, before the juſtices of the ſaid late king at *Weſtminſter*, recovered againſt the ſaid *Elizabeth*, as 40*s.* which in the ſame court of the ſaid late king were adjudged to the ſame *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for their damages which they had by occaſion of the detaining that debt, to be levied of the ſame goods and chattels, if the ſaid *Elizabeth* had ſo much thereof in her hands to be adminiſtered; and if ſhe had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *Elizabeth*; and that he ſhould have that money here from the day of the holy *Trinity* in three weeks, to render to the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*,

De bonis teſtatoris ſi, &c.

Si non &c. Damna de bonis propriis.

Mary, and *Thomas*, for the debt and damages aforesaid, whereof the said *Elizabeth* is convicted. And now here at this day came the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, by *Richard Puplet* their attorney; and the sheriff now returneth, that he, by virtue of the said writ to him directed, had caused the said 40*s*. being the damages aforesaid, to be made of the proper goods and chattels of the said *Elizabeth*, which said 40*s*. he hath here at this day to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the damages aforesaid; and the said sheriff further returneth to the justices here, that there are no goods or chattels in his bailiwic which were of the said *Henry*, in the hands of the said *Elizabeth* to be administered, whereof he could cause to be made the said debt and damages, or any part thereof; and because the said return is conceived to be made in delay of the execution of the said judgment as to the debt aforesaid; and it is testified in the same court of the king here, on the behalf of the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, that the said *Elizabeth* hath sold, eloined, wasted, converted and disposed to her own proper use divers goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, to the value of the debt aforesaid, to the intent that execution of the said debt might not be thereof made; and our said lord the king being unwilling that those

Return.

Damages levied de bonis propriis.

Nulla bona testatoris.

Devastavit *suggested.*

thoſe things, which in the ſame court of the ſaid late king were rightly acted and adjudged, ſhould be rendered void by art or deceit; therefore the ſheriff is commanded, that of the goods and chattels which were of the ſaid *Henry* at the time of his death in the hands of the ſaid *Elizabeth* to be adminiſtered, being in his bailiwic, he ſhould cauſe to be made the ſaid debt, if it may be thereof levied, and have the money thereof levied here, on [*the return*] to render to the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the debt aforeſaid; and if the ſaid debt cannot be levied in form aforeſaid, then if it can appear to the ſame ſheriff by inquiſition on that behalf to be taken, upon the oath of good and lawful men of his bailiwic, or by any other method whereby he may be the better certified thereof, that the ſaid *Elizabeth* hath ſold, eloined, waſted or converted, and diſpoſed to her own uſe, goods and chattels which were of the ſaid *Henry* at the time of his death, and have come to the hands of the ſaid *Elizabeth* to be adminiſtered, then by good, *&c.* he ſhould make known to the ſaid *Elizabeth*, that ſhe be here at the time aforeſaid, to ſhew, if, *&c.* why the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, ought not to have execution againſt her of the debt aforeſaid, to be levied of the proper goods and chattels of the ſaid *Elizabeth*, according to the form of the ſaid recovery, if, *&c.*

Fieri facias pro debito *awarded.*

Si debitum levari non poſſit tunc ſi conſtat per inquiſitionem quod def. devaſt'.

Sci. fa.

Clift's *Entr.* 662.

Like notice muſt be given of executing a *Scire fieri & inquir.* as is given of trial, or of executing

Notice of executing Sci' fier. Inquir'.

executing a writ of inquiry or damages. *Barnes* 304. *Pract. Reg. C. P.* 379. *Rep. & Caſ. of Pract. C. P.* 1.

In the Common Pleas.

Hilary——George *the third.*

Middleſex, *to wit.* IT was commanded to the ſheriff, Whereas *W F.* eſq; in the court of our ſovereign lord *George* the third, king of *Great Britain*, &c. *to wit*, in *Eaſter* term in the ſeventh year of our reign, before Sir *John Eardley Wilmot*, knight, and his companions, our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſaid court had recovered againſt *C. M.* late of *Weſtminſter* in the county of *Middleſex*, eſq; and the lady *E. M.* his wife, executrix of the teſtament and laſt will of *C.* lord *M.* her late huſband, deceaſed, lately called *C.* lord *M.* as well a certain debt of 391 *l.* as 50*s.* which in the ſaid court of the ſaid king were adjudged to the ſaid *W.* for his damages by occaſion of the detaining that debt to be levied of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death in the hands of the ſaid *C. M.* and lady *E. M.* to be adminiſtered, if they had ſo much in their hands; and if they had not, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *C. M.* and lady *E. M.* whereof they were convicted, as by the records and proceedings there-

Declaration on a Scire facias *upon a judgment recovered againſt the defendant and his wife (ſince deceaſed) executrix.*

thereupon in the court of our lord the preſent king now here remaining manifeſtly appeareth; *yet* execution of the ſaid judgment ſtill remaineth to be done, and the ſaid lady *E. M.* is dead, as the king hath heard from the information of the ſaid *W.* And becauſe, *&c.* by good, *&c.* he ſhould make known to the aforeſaid *C. M.* adminiſtrator of the goods and chattels which were of the ſaid lady *E. M.* and adminiſtrator, with the will of the ſaid *C.* lord *M.* annexed, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, unadminiſtered by the ſaid lady *E. M.* that ſhe ſhould be here at this day, *to wit*, on the octave of the Purification of the bleſſed *Mary*, to ſhew if any thing, *&c.* why the ſaid *W.* ought not to have execution againſt him of the debt and damages aforeſaid, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, being in the hands of the ſaid *C. M.* to be adminiſtered, according to the form of the recovery aforeſaid, if, *&c.* And now here at this day comes as well the ſaid *W.* by *F. P.* his attorney, as the ſaid *C. M.* ſummoned, *&c.* by *J. S.* his attorney; and the ſheriff, *to wit*, *J. R.* eſq; and *T. C.* eſq; now return, that he, by virtue of the ſaid writ to him directed by *R. H.* and *S. W.* good, *&c.* had made known to the ſaid *C. M.* that he ſhould be here at this day to ſhew in form aforeſaid, *&c.* And upon this the ſaid *W.* prayeth execution to be adjudged to him againſt the ſaid *C. M.* of the

Death of the wife.

Defendant adminiſtrator of his wife, and adminiſtrator de bonis non, &c. *of her teſtator.*

the debt and damages aforeſaid, to be levied of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death not adminiſtered by the ſaid lady *E. M.* in the hands of the ſaid *C. M.*

And the ſaid *C. M.* by *J. S.* his attorney cometh and ſaith, that the ſaid *W.* ought not to have his execution againſt him of the debt and damages aforeſaid, of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, becauſe he ſaith no goods or chattels which were of the ſaid *C.* lord *M.* at the time of his death not adminiſtered by the ſaid lady *E. M.* at the time of the death of the ſaid *E.* or at any time afterwards, have come to the hands of the ſaid *C. M.* to be adminiſtered; and that he the ſaid *C. M.* hath not, nor on the day of ſuing forth the ſaid writ, nor at any time afterwards, had any goods or chattels which were of the ſaid *C.* lord *M.* at the time of his death in the hands of him the ſaid *C. M.* to be adminiſtered, whereof he could have ſatisfied the ſaid *W.* of the debt and damages aforeſaid, or any parcel thereof: And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *W.* ought to have his execution againſt him of the debt and damages aforeſaid of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death.

Plea.

No aſſets come to hands.

And the ſaid *W.* ſaith, that he by any thing before alledged ought not to be barred from having his execution againſt the ſaid *C. M.* for the debt and damages aforeſaid,

Replication.

Aſſets comes to hands.

of the goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death, becauſe, he ſaith, that the ſaid writ of the ſaid *W.* was ſued forth on the 24th day of *January* in the year of his preſent majeſty's reign; and that the ſaid *C. M.* on the ſaid day of ſuing forth the ſaid writ had diverſe goods and chattels which were of the ſaid *C.* lord *M.* at the time of his death in the hands of the ſaid *C. M.* to be adminiſtered, to the value of the debt and damages aforeſaid, wherewith he could have ſatisfied the ſaid *W.* for the debt and damages aforeſaid, *to wit*, at *Weſtminſter* aforeſaid; and this he prayeth may be inquired of by the county.

In the Common Pleas.

Michaelmas ——— George *the third.*

Declaration on a Sci. fa. *upon a judgment for aſſets* in futuro *againſt an executrix.*

London, *to wit*, IT was commanded to the ſheriffs, Whereas *M. G.* widow, and *N. V.* lately in the court of our lord the preſent king here, before the juſtices of our lord the preſent king of the bench here, *to wit*, at *Weſtminſter*, by the judgment of the ſaid court had recovered againſt *K. M.* late of *London*, widow, executrix of the teſtament and laſt will of *H. M.* late of *London*, eſq; her late huſband deceaſed, 1480*l.* for their damages which they had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings made by

the ſaid *H.* in his life-time to the ſaid *M.* and *N.* in *London*, to wit, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, as for their coſts and charges by them the ſaid *M.* and *N.* about their ſuit in that behalf expended, adjudged to the ſaid *M.* and *N.* by the ſaid court of our ſaid lord the king, before the juſtices of our ſaid lord the king at *Weſtminſter*, to be levied of the goods and chattels which were of the ſaid *H.* at the time of his death, which after the giving the ſaid judgment ſhould come to the hands of the ſaid *K.* to be adminiſtered, whereof ſhe was convicted, as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king before the juſtices of our ſaid lord the king here, *to wit*, at *Weſtminſter* aforeſaid manifeſtly appeareth. *And whereas*, after the ſaid judgment was given, diverſe goods and chattels which were of the ſaid *H.* at the time of his death, to the value of the damages aforeſaid and above, have come to the hands of the ſaid *K.* to be adminiſtered, out of which ſhe could have ſatisfied the ſaid *M.* and *H.* of their damages aforeſaid, as the king has been given to underſtand by the information of the ſaid *M.* and *N.* And becauſe, *&c.* that by good, *&c.* they ſhould give notice to the aforeſaid *K.* that ſhe might be here at this day, *to wit*, on the morrow of St. *Martin*, to ſhew if any thing, *&c.* why the ſaid *M.* and *N.* ought not to have execution againſt her of the damages aforeſaid of the goods and chattels which were of the ſaid *H.* at the time of his death,

Suggeſtion of aſſets ſince come to defendant's hands.

death, which after the ſaid judgment was given have come to the hands of the ſaid *K.* to be adminiſtered, according to the form and effect of the recovery, if, *&c.* And now here at this day came as well the ſaid *M.* and *N.* by *J. H.* their attorney, as the ſaid *K.* by *J. S.* her attorney; and the ſaid *M.* and *N.* offered themſelves on the fourth day againſt the ſaid *K.* of the plea aforeſaid; and the ſheriffs now returned, that by *J. N.* and *R. R.* good, *&c.* they had given notice to the ſaid *K. M.* to be here at this day, to ſhew, *&c.* and upon this the ſaid *M.* and *N.* pray execution againſt the ſaid *K.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *H.* at the time of his death, which after the ſaid judgment was given have come to the hands of the ſaid *K.* to be adminiſtered, to be adjudged to them, *&c.* Upon which the ſaid *K.* ſaith, that after the ſaid judgment was given, no goods or chattels which were of the ſaid *H.* at the time of his death, have come to the hands of the ſaid *K.* to be adminiſtered, whereof ſhe could have ſatisfied the ſaid *M.* and *N.* of their damages aforeſaid, or of any parcel thereof; and of this ſhe putteth herſelf upon the country; and the ſaid *M.* and *H.* likewiſe: Therefore the ſheriffs are commanded, that they cauſe to come here twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.*

Defendant appears.

Sheriffs return Scire fec.

Defendant pleads no aſſets come to hand.

Iſſue.

You enter the writ of *Scire facias* and *Alias*, if any, on the prothonotary's remembrance

brance roll, and give a rule thereon for the defendant to appear.

No costs on Sci. fa. till plea.

The plaintiff on motion in the treasury may quash his own *Scire facias* without paying costs, though the defendant has appeared; for the practice of this court is, that no costs shall be paid on proceedings by *Scire facias* till a declaration be delivered, and the defendant has pleaded.

Term of the judgment not necessary.

In a *Scire facias* to revive a judgment it is not necessary to insert the particular term in which the judgment was given. *Barnes* 431.

At common law, if after judgment the plaintiff sued not execution within the year, he had no remedy, but by an action on the judgment; but a *Scire facias* in personal actions is given by the statute of *Westminster* 2. *c.* 45. 2 *Inst.* 469, 470, *vide Salk.* 600.

Where no Sci. fa. if a Cesset execut.

If there be a *Cesset executio* for a year, the plaintiff may within the next year take out execution without a *Scire facias*.

Scire facias must be sued out tho' execution stayed by injunction.

If the plaintiff be delayed from taking out execution within the year and a day by an injunction out of *Chancery*, he cannot after the injunction dissolved take out execution without reviving the judgment by *Scire facias*; but it will be no breach of the injunction to take out execution within the year, so as it be not executed, which will save the trouble of bringing a *Scire facias*, by continuing the execution on the roll by *Vic' non misit breve.* 6 *Mod.* 288. But see *Rep. and Cas. of Pract. C. P.* 82. *& Pract. Reg. C. P.* 377. Both which seem *contra.*

Defendant charged in execution 4 years after judgment without Sci. fa.

Execution by default was awarded on a *Scire facias* upon a judgment in debt, and the defendant four years afterwards being in the *Fleet* for another cauſe was brought into court by *Habeas corpus*, where he admitting himſelf to be the ſame perſon was committed in execution *moraturus quouſque — Nota poſt annum & diem alſque novo Scire facias. Dy.* 214. *pl.* 47.

On death of defendant.

If a man recovers debt or damages by judgment, and the defendant dies, no execution lies againſt his executor without a *Scire facias.*

Or of plaintiff Sci. fa. *muſt iſſue.*

If a man has judgment for debt or damages, and dies before execution, his executor ſhall not have execution, though it be within the year, without a *Scire facias.*

Vide antea fol. Death of either party after interlocutory judgment, and before final judgment.

But not on death of one where there are many plaintiffs or defendants.

If there be two plaintiffs in a perſonal action, and one of them dies, that ſhall not put the other to a *Scire facias*; ſo if one of the defendants die. *Moor* 367. *pl.* 503. *Noy* 150. 5 *Mod.* 339. 7 *Mod.* 68. But a ſuggeſtion of the death muſt be made on record. *Salk.* 319.

Into what county Sci. fa. *on a judgment muſt iſſue.*

On a judgment wherein the action was laid in *Cumberland* a *Scire* was brought in *Weſtmoreland*, and judgment was had thereon; but that judgment was reverſed on error in the *Exchequer* chamber, for a *Scire facias* muſt be brought in the ſame county where the firſt action was laid. *Hob.* 4. *Cro. Car.* 228, & *vide Yel.* 218. *S. C.* for the diverſity

ty between a *Sci e facias* on a judgment, and an action of debt on a judgment.

If a recognizance of bail be taken before a judge at his chambers in *London*, and entered on record as taken in *London*, it was reſolved by all the prothonotaries, that the *Scire facias* ſhould be directed to the ſheriffs of *London*, and not to the ſheriff of *Middleſex*, *Bro. Abr. fol.* 66. *b. pl.* 85. though the recognizance is not a perfect record 'till it be entered upon the roll; yet when it is entered, it is a record from the firſt acknowledgment, and binds perſons and lands from that time; for it is the acknowledgment before the judge that gives it the force of a record, though the inrolment be neceſſary for the teſtification and perpetuity of it. *Hob.* 195. But in the caſe of *Andrews* and *Harborne* the prothonotaries certified, that upon ſuch recognizance the *Scire facias* might be brought in *Middleſex*, or in *London*; and that it uſed to be brought either in *London* or *Middleſex*. *Roll. Abr.* 891. *All.* 12. So where bail taken by commiſſioners in the county of *York*, a *Scire facias* lies againſt them either in the county of *York* or *Middleſex*. 2 *Lutw.* 1287. *Vide Salk.* 564, 600, 659. *Into what county on a recognizance.*

Leave to amend *Sci. fa.* againſt bail, ſometimes refuſed, where advantage of ſurrendering principal would thereby be loſt. *Barnes* 26, 27.

Outlawry.

Outlawry.

IN the following actions, *viz.* Treſpaſs, aſſault, caſe, covenant, account, debt, detinue and replevin, you may proceed to outlaw a man who is not eaſily to be arreſted, and hath not ſufficient eſtate in the county whereby he may be ſummoned, *&c.*

Deſt. ſooner outlawed in London than in another county.

If the action be laid in *London*, the defendant will be ſooner outlawed than in another county, in regard that between the teſte and return of the exigent there muſt be five county days, which are held every month, and the *Huſtings* in *London*, which anſwer the county days, are held every fortnight.

Of the* Præcipe *for the original.

You cannot outlaw a man on proceſs with *Acetiam*; and if your original be only a *Clauſum fregit*, the defendant may reverſe the outlawry without bail, and therefore the beſt way is to make out a *Præcipe* for a ſpecial original, which is in this form, according to the nature of the action.

A* Præcipe *for a ſpecial original on an* Indeb. aſſumpſit *for the charges of a funeral.

London, If *T. J.* ſhall make, *&c.* then put, *&c. C. W.* late of *New Bond-ſtreet* in the county of *Middleſex*, upholſter, that he be before our juſtices at *Weſtminſter*, on the morrow of the Purification of the bleſſed *Mary*, to ſhew wherefore whereas the ſaid *C.* on the 10th day of *Auguſt* in the year of our Lord 1766, at *London*, *to wit*, in the pariſh of St. *Mary le Bow* in the ward of *Cheap*, was indebted to the ſaid *T.* in 60*l.* lawful money of *Great Britain*, as well for work,

work, labour and care of the ſaid *T.* about the funeral of one *R. F.* deceaſed, by the ſaid *T.* before that time, at the ſpecial inſtance and requeſt of the ſaid *C.* done and performed, as for diverſe materials and neceſſary things, by the ſaid *T.* at the like ſpecial inſtance and requeſt of the ſaid *C.* at the coſts and charges of the ſaid *T.* on that occaſion found and provided; and by the ſaid *T.* in and about that funeral uſed and expended; and being ſo indebted the ſaid *C.* in conſideration thereof afterwards, *to wit*, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *C.* would well and truly pay to the ſaid *T.* the ſaid 60*l.* when he ſhould be thereunto afterwards required. *And alſo whereas* the ſaid *C.* afterwards, *to wit*, on the day and year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *T.* at the like ſpecial inſtance and requeſt of the ſaid *C.* had before that time done and performed other work and labour in and about the funeral of one *R. F.* deceaſed, and at the like ſpecial inſtance and requeſt of the ſaid *C.* had found and provided at the coſts and charges of him the ſaid *T.* diverſe materials and neceſſary things on that occaſion, and had expended and uſed the ſaid materials and neceſſary things laſt mentioned in and about the laſt mentioned funeral, undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *C.* would, when he ſhould be thereunto

Quantum meruit *thereon.*

thereunto required, well and truly pay and content to the ſaid *T.* not only all ſuch ſums of money as the ſaid *T.* reaſonably deſerved to have for his ſaid work and labour laſt above mentioned, but alſo all ſuch ſums of money as the ſaid materials and neceſſary things laſt mentioned at the time of the finding and providing thereof, as aforeſaid, were reaſonably worth; and the ſaid *T.* averreth, that he reaſonably deſerved to have for his laſt mentioned work and labour 20*l.* of like lawful money; and that the materials and neceſſary things laſt mentioned were at the time of the finding and providing thereof, as aforeſaid, reaſonably worth 40*l.* of like lawful money, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid, of which afterwards, that is to ſay, on the ſame day and year aforeſaid, the ſaid *C.* there had notice: *Neverthleſs* the ſaid *C.* no ways regarding his ſaid promiſes and undertakings made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *T.* in this behalf, has not paid to the ſaid *T.* the ſaid ſeveral ſums of money, or any part thereof, nor any ways contented him for the ſame (although the ſaid *C.* afterwards, *to wit*, on the 12th day of *Auguſt* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, was thereunto requeſted by the ſaid *T.*) But he hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *T.* to the damage of the ſaid *T.* of 60*l.* as he ſaith, Returnable, *&c.*

Breach.

You

You carry this *Præcipe* to the curſitor of the county, who will thereupon make out an original: If the *Præcipe* be carried to the curſitor before the eſſoin-day of a term, he will make the original returnable on any return of the precedent term. You may return the original of courſe thus: *Of returning the original.*

Pledges of proſecuting { *John Doe*, / *Richard Roe.*

The within named *C. W.* hath nothing in our bailiwic by which he can be attached [or * ſummoned.]

J. B. eſq; and *W. W.* eſq; } ſheriffs.

You muſt carry the original thus returned to the filacer of the county, who will make out a *Capias*, *Alias* and *Pluries* all together, if the original will bear it, each of which writs muſt have 15 days between the teſte and return. After the *Capias*, *Alias* and *Pluries* are ſealed, you may return them ſeverally, after this manner: *Of making out the* Capias, Alias *and* Pluries.

The within named *C. W.* is not found in our bailiwic. *Of returning them.*

---

* *Vide antea fol.*

The

The anſwer of
J. B. eſq;
and
W. W. eſq;
} ſheriffs.

I apprehend the plaintiff ought to make an affidavit of his debt on ſuing out the *Capias*, and endeavour to get the *Capias*, *Alias* and *Pluries* executed, if poſſible, and let them be returned by the ſheriff.

Warrant of attorney to be filed of the ſame term with the exigent.

Every attorney ſhall file his warrant of attorney of the term wherein any *Exigent* is awarded, upon pain of 40*s.* for every time he offends, and is attainted by due examination of the juſtices of this court; ſuch warrant to be filed upon or before the eſſoin-day of every *Trinity* term, and within 21 days after the end of every other term. *Hil.* 14, 15 *Car.* 2.

Exigenter not to receive Pluries *before ſigned by clerk of the warrants.*

No exigenter ſhall receive any *Pluries capias* in order to make an exigent or proclamation thereon, before the ſame be ſigned or ſtamped by the clerk of the warrants, or his deputy, to the end it may appear, that the warrant of attorney therein is duly filed. *Hil.* 2, 3 *Jac.* 2.

Trinity *term in the ſeventh year of the reign of king* George *the third.*

The warrant of attorney.

London. *T. J.* putteth in this place *L. R.* his attorney againſt *C. W.* late of *New Bond-ſtreet* in the county of *Middleſex*,

ſex, upholſter, in a plea of treſpaſs on the caſe.

This warrant of attorney being filed, for which you pay 4*d.* the clerk of the warrants ſtamps the *Pluries*, which you thereupon carry to the exigenter of the county, who will make out an exigent and proclamation, which you are to get ſealed, and carry to the ſheriff of the county in which you have laid the action, and the proclamation to the ſheriff of that county wherein the defendant dwells at the time of awarding the exigent.

Exigenter, on receipt of the Pluries *ſtampt, to make out the exigent and proclamation.*

If there happen not to be five county days between the teſte and return of the exigent, you muſt apply to the exigenter for an *Allocatur* to bring in the five county days; and the like muſt be in *London* for want of *Huſtings*.

Where an Allocatur *neceſſary.*

You may make out your proceſs in order, and endeavour to take the defendant on any of them; and it is the ſafer way ſo to do.

Where any exigent ſhall be awarded, a writ of proclamation ſhall be made out of the ſame teſte and return as the writ of exigent directed to the ſheriff of the county where the defendant at that time of the exigent awarded ſhall be dwelling, which writ of proclamation ſhall contain the effect of the ſame action; and the ſheriff to whom the proclamation ſhall be directed ſhall make 3 proclamations, *viz.* one in open county court, one other at the general quarter-ſeſſions of the peace in thoſe parts, where the defendant at the time of the exigent awarded ſhall be dwelling; and one other one month

When an exigent is awarded, a proclamation to be made out of the ſame teſte and return.

Sheriff to make three proclamations.

month at leaſt before the *Quint. exact'*, by virtue of the writ of exigent, at or near the moſt uſual door of the church or chapel of that town or pariſh where the defendant ſhall be dwelling at the time of the exigent ſo awarded; and if the defendant ſhall be dwelling out of any pariſh, then in ſuch place as aforeſaid of the pariſh next adjoining to the defendant's dwelling, and upon a *Sunday* immediately after divine ſervice. All outlawries pronounced, and no proclamation awarded and returned, according to this ſtatute, are void.—*Stat.* 31 *Eliz. c.* 3. §. 1.

His fee. The ſheriff, for making the proclamation at or near the church door, ſhall have 12 *d.* *Same ſtat.* §. 1.

Officer who makes out the exigent to make out the proclamation. His fee. The officer in whoſe office the exigent ſhall be taken ſhall make out the proclamation, and ſhall take no more for making ſuch writ of proclamation, and entering it on record, but only 6 *d.* *Stat.* 6 *Hen.* 8. *c.* 4. §. 3, 4.

Attornies to be careful that writs of proclamation be delivered. According to the proviſion of the ſtatute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and the ſheriffs to take care duly to execute the ſame. *Mich.* 1654.

Proclamation to be filed with the Cuſtos brevium. After the exigent and proclamation is returned, you file the proclamation with the *Cuſtos brevium*, and carry the exigent to the clerk of the outlawries, who will thereupon make out a *Capias utlagatum* either general or ſpecial, the one againſt the defendant's body, the other againſt his body, goods and lands,

Capias utlagatum *either general or ſpecial.*

lands, into as many counties as you ſhall think proper either in *England* or *Wales*.

If the defendant appears by *Superſedeas quia improvide*, or doth truly render himſelf upon the exigent, no bail is requirable. *Mich.* 1654. *If defendant appears on the exigent, no bail is required.*

No ſheriff, under-ſheriff, their deputies or bailiffs, ſhall ſet at liberty any perſon arreſted upon any *Capias utlagatum*, until he receive a *Superſedeas* according to law from the officer thereunto appointed. *Mich.* 1654. *Stat.* 13 *Car.* 2. *c.* 2. §. 4. *Sheriff not to diſcharge defendant arreſted on* Capias utlagatum *without a* Superſedeas.

No ſheriff, under ſheriff, *&c.* ſhall ſet at liberty any perſon taken upon any writ of *Capias utlagatum*, nor diſcharge the lands or goods of any perſon outlawed, without a lawful *Superſedeas* under the ſeal of the court. *Hil.* 15, 16 *Car.* 2.

Upon affidavit made and filed, that any ſheriff, officer, or bailiff, has enlarged any perſon arreſted upon *Capias utlagatum* before judgment, without a lawful *Superſedeas* in that behalf, the perſon ſo offending ſhall pay 40*s.* to the party grieved, who ſhall have an attachment of courſe againſt ſuch ſheriff, officer, bailiff, or party offending, for payment of the ſame; and the party offending ſhall likewiſe undergo ſuch other puniſhment as by the court ſhall be thought fit. *Trin.* 2 *Jac.* 2. *Penalty of* 40*l.* *&c.*

Before the reverſing of any outlawry, or any *Superſedeas* made thereunto, the defendant ſhall give ſpecial bail, if the ſum or damages expreſſed in the original, whereupon the exigent was awarded, ſhall amount to the ſum *Before* Superſedeas *defendant to give bail, if the cauſe of action be* 10*l.* *or upwards.*

ſum of 10*l.* or upwards. *Hil.* 15, 16 *Car.* 2. *Trin.* 2 *Jac.* 2.

Defendant to give bail to ſatisfy the condemnation.

Before any allowance of any writ of error, or reverſing of any outlawry be had, by plea or otherwiſe, through or by want of any proclamation to be had or made according to this ſtatute, the defendant in the original action ſhall put in bail, not only to appear and anſwer the plaintiff in the former ſuit in a new action, to be commenced for the cauſe in the firſt action, but alſo to ſatisfy the condemnation if the plaintiff ſhall begin his ſuit before the end of * *two terms* next after the allowing the writ of error, or otherwiſe avoiding the ſaid outlawry. *Stat.* 31 *Eliz. c.* 3. *ſ.* 3. *Mich.* 12 *Geo.* 1. the rule ſays of * *the term* next after, *&c.*

Outlawry after the death of the plaintiff not to be reverſed without bail to the executor.

No outlawry after the death of the plaintiff in the action ſhall be reverſed, without the defendant's appearing and putting in ſpecial bail (if the action requires it) to the executor or adminiſtrator of the plaintiff, or to the huſband and wife, where the wife while a *Feme* ſole ſued the defendant to an outlawry before marriage, provided that the defendant's attorney do, within 14 days after notice given of the defendant's intention to reverſe the outlawry, deliver the name of the executor or adminiſtrator of ſuch deceaſed plaintiff to the proper prothonotary. *Trin.* 2 *Jac.* 2.

Judgment of outlawry appearing to be entered after plaintiff's death, and *Cap. uti.*

to be iſſued without revival of judgment; *Cap. utl.* was ſet aſide. *Barnes* 325.

Outlawry commenced and completed during defendant's reſidence in *Ireland*, was ordered to be reverſed at his expence, without bail or appearance. *Barnes* 325. But court will not exerciſe their diſcretionary power to reverſe outlawries on motion in a ſummary way for a viſible defect, but in a favorable caſe for defendant; and therefore where he appeared to be an abſconding perſon, and the motion, though in his name, not made by him, but by a third perſon, and the matter appearing to be a contention between creditors, the court would not interfere, but put party to bring his writ of error. *Barnes* 325, 326.

On reverſing an outlawry defendant only to pay coſts to the exigent, and the fine.

No defendant, who ſhall be outlawed and ſhall appear and reverſe ſuch outlawry, ſhall upon the reverſal pay to the plaintiff any ſum of money exceeding the uſual coſts of the *Exigent*, together with the fine paid to the king upon the original, and all further coſts ſhall be reſpited to the time of ſigning judgment for the plaintiff. *Trin.* 33 *Car.* 2.

Further coſts reſpited quouſque.

No Superſedeas *to the exigent, unleſs put in before the day of appearance, to be allowed till coſts paid.*

Upon every writ of *Exigent*, if a *Superſedeas* be not put in thereto, at or before the day of appearance thereof, no *Superſedeas* ſhall by any ſheriff be allowed to any ſuch writ, until the defendant ſhall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof, the full and juſt coſts of ſuit therein; and upon the reverſal of any outlawry the defendant ſhall, before the reverſal or any *Su-*

On reverſal defendant ſhall pay coſts to the exigent.

perſedeas, pay to the plaintiff or his attorney, or leave in the court for him the full coſts of ſuit to the *Exigent*. And where the ſheriff ſhall have taken an inquiſition, and extended the goods, chattels, *&c.* and returned the ſame into the *Exchequer*, ſuch further coſts ſhall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as the plaintiff hath been at in proſecuting the ſaid inquiſition, before any certificate of the reverſal ſhall be made by the clerk of the outlawries. *Trin.* 2 *Jac.* 2.

Where inquiſition taken, &c. further coſts to be taxed.

On making out a *Superſedeas* the defendant need not enter an appearance with the Exigenter; the *Superſedeas* itſelf is an appearance. *Dyer* 233.

On reverſing an outlawry, if plt. proceed not in two terms deft. to have coſts taxed.

Every defendant who ſhall be outlawed, and cauſe the ſaid outlawry to be reverſed, if the plaintiff thereupon ſhall not proceed within two terms next after notice of reverſing thereof, ſhall have coſts to be taxed by the prothonotary. *Trin.* 33 *Car.* 2.

Of outlawing after judgment

A man may be outlawed after judgment, and that without any writ of *Alias*, *Pluries*, or proclamation. In this caſe you ſue out a writ of *Capias ad ſatisfaciendum*, which muſt have 15 days between teſte and return; and if the defendant cannot be taken thereon, you get the ſheriff to return *Non eſt inventus* on the writ, and then carry it to the Exigenter, who will make out a writ of *Exigent* againſt the defendant, upon the return of which you may have a *Capias utlagatum*, either general or ſpecial, and into as many counties as you pleaſe, either in *England*

land or *Wales*; and if the defendant's body be taken, or his goods extended thereon, he can obtain no discharge for either till he has made satisfaction.

No outlawry after judgment, pending a writ of error.

But if a writ of error be brought on the judgment, the plaintiff cannot proceed to outlaw the defendant pending the writ of error; for though the plaintiff may bring an action of debt on the judgment pending a writ of error, and proceed to judgment thereon, it has always been confined to restraining the plaintiff from taking out execution, and the *Exigent* being founded on the *Capias ad satisfaciendum* is a proceeding to execution, and therefore not justifiable.

It much behoves practisers to be cautious when they outlaw, for if the defendant appears * publickly, and the attorney can be affected with the knowledge of it, the court will, I apprehend, make him reverse it at his own charge, if not otherwise punish him.

Before defendant is returned outlawed, he may supersede the Exigent, though founded on a special original, but cannot after, without bail, who are bound to pay the money at all events, not being at liberty to render the principal in their discharge. *Barnes* 326.

---

* A visible person outlawed, he being a desperate man, riding armed, and telling the plaintiff that he absconded. *Pract Reg. C. P.* 272. See *Barnes* 325.

A person visible outlawed, he living within the verge of the court, and plaintiff not being able to obtain leave to arrest him. *Pract. Reg. C. P.* 274.

Of procuring the money levied on the defendant's goods.

Where the defendant's goods are taken on the ſpecial *Capias utlagatum*, the ſheriff, if the plaintiff requires it, will extend and appraiſe the goods by inquiſition, and for that purpoſe the plaintiff muſt firſt have them inventoried and appraiſed by proper perſons, to give evidence of their value to the jury; if they are not worth above 40*l.* they will hardly be worth the plaintiff's trouble to extend them. In *Middleſex* the ſheriff takes for the inquiſition as follows:

	l. *s.* *d.*	*l.* *s.* *d.*
For taking the inquiſition, ſchedule of the goods ſeized, and return ——	——	0 18 6
To the bailiff for ſummoning the jury —	0 4 0	
For the uſe of the room where the inquiſition is taken ——	0 1 0	
To every juryman 1*s.*—	0 12 0	
	——	0 17 0
		1 15 6

It may be proper to give the defendant notice of taking the inquiſition, as is done of executing a writ of inquiry.

If there be occaſion, a *Subpœna* for witneſſes may be made out in the following form.

GEORGE, &c. To *A. B. &c.* greeting. We command you, and every of you, that

that all excuſes being laid aſide, you be in your proper perſons before the ſheriff of our county of *Middleſex* on —— the —— day of ——— at ——— of the clock in the ——noon at the court-houſe at *Weſtminſter* [or at the *Three Tons* in *Brook-ſtreet* near *Holborn*] in the county of *Middleſex*, to teſtify and declare the truth according to your knowledge, upon a certain inquiſition to be taken by the ſaid ſheriff, on the oath of good and lawful men of his county, purſuant to our precept to inquire what lands and tenements, goods and chattels *W. S.* late of, *&c.* was poſſeſſed of on the —— day of ——— in the year of our Lord ——, on which day he was outlawed at the ſuit of *R. R.* And this you, either or any of you, are not to omit, under the penalty of 100*l.* for the default of each of you. Witneſs, *&c.*

When the *Capias utlagatum* is returned with the inquiſition annexed, it muſt be carried to the clerk of the outlawries, who will tranſcribe, and tranſmit it into the *Exchequer*; then a clerk in the king's remembrancer's office muſt be employed, who will ſue out a writ of *Venditioni exponas*, by virtue of which the ſheriff will ſell the goods. If the money raiſed exceeds not 20*l.* the court of *Exchequer*, on motion, will order the money to be paid to the plaintiff; but if the money be above 20*l.* a petition to the following effect muſt be preſented to the lords of the treaſury.

To the right honourable the lords commiſſioners of his majeſty's treaſury.

The humble petition of R. R.

Sheweth,

Petition to the lords of the treaſury.

THAT *W. S.* late of, *&c.* being indebted to your petitioner in the ſum of 50*l.* your petitioner did in *November* laſt, at his very great charge, proſecute the ſaid *W. S.* to an outlawry; and by virtue of a ſpecial *Capias utlagatum* directed to the ſheriff of *Middleſex*, ſeveral goods of the ſaid *W. S.* were ſeized, and found by inquiſition to be of the value of 45*l.* which goods were afterwards ſold by the ſaid ſheriff, by virtue of a writ of *Venditioni exponas*, at the ſame price and value they were ſo appraiſed at, and the money thereupon raiſed now remains in the hands of the ſheriff of *Middleſex*.

That your petitioner's ſaid debt, and the charge he has already been at in proſecuting the ſaid outlawry, greatly exceed the ſum ſo remaining in the ſaid ſheriff's hands.

Wherefore your petitioner humbly prays your lordſhips, that the money ſo levied as aforeſaid may be paid over to your petitioner.

And your petitioner ſhall ever pray, &c.

This

This petition the lords of the treaſury will refer to their ſolicitor, now *Thomas Nuttall*, eſq; The plaintiff muſt make an affidavit before one of the barons of the *Exchequer*, to ſupport the allegations in the petition, particularly of his debt and the charge he has been at. This affidavit, with the attorney's bill, *Venditioni exponas* and return, muſt be laid before the ſolicitor of the treaſury, who being ſatisfied of the truth of the petition will make a report to their lordſhips accordingly, and then a warrant will iſſue to his majeſty's attorney general, to conſent that ſo much of the money levied as ſhall remain in the hands of the ſheriff, after deducting the uſual poundage, be paid to the plaintiff, towards ſatisfaction of his debt and coſts, on his moving the court of *exchequer* for an order for that purpoſe; this warrant muſt be delivered to the attorney general, who on the plaintiff's making ſuch motion by counſel, will conſent accordingly, and then, on producing the order under ſeal, the ſheriff will pay the money to the plaintiff.

The expence out of pocket of this application.

	l.	*s.*	*d.*
Duty and oath of the affidavit	0	2	6
To the ſolicitor of the treaſury	1	1	0
To his clerk ——	0	5	0
At the treaſury, for the reference, &c. warrant and poundage, when the ſum does not exceed 50*l.* you pay about —	3	3	0

To

	l.	*s.*	*d.*
To the attorney general ——	2	2	0
To his clerk —— ——	0	2	6
Fee to the counsel to move —	0	10	6
To the clerk in the *Exchequer* according to the length of the proceedings, about ——	5	10	0

Of writs of error.

WHERE a party apprehends himself grieved by the judgment of this court, he may remove the same by a writ of error into the *King's Bench*. This writ is made out by the cursitor for the county wherein the action is laid; and is in this form:

A writ of error.

GEORGE the second, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To his trusty and well-beloved Sir ——— knt. chief justice of the bench, greeting. Forasmuch as in the record and process, and also in giving of judgment, in a plaint which was in our court before you and your associates, our justices of the said bench, by bill between *William Norman* and *Samuel Burrough*, gent. one of the attornies of our court of the bench, of a certain trespass upon the case done to the said *William* by the said *Samuel* as it is said, manifest error hath intervened, to the great damage of the said *Samuel*, as by his complaint we are informed, we, willing that the said error, if any be, be duly amended,

ded, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given thereupon, then you ſend to us diſtinctly and plainly under your ſeal, the record and proceſs of the ſaid plaint, with all things touching the ſame, and this writ; ſo that we may have them on the octave of St. *Hilary*, whereſoever we ſhall then be in *England*; that inſpecting the record and proceſs aforeſaid, we may cauſe farther to be done thereupon for amending the ſaid error, as of right, and according to the law and cuſtom of *England*, ſhall be meet to be done. Witneſs *Caroline*, queen of *Great Britain*, *&c.* guardian of the ſame realm, *&c.* at *Weſtminſter*, the 26th day of *November* in the 10th year of our reign. *Burgh.*

You pay for this writ 13*s.* *viz.* 2*s.* 6*d.* the curſitor's fee and ſeal, and 10*s.* 6*d.* the king's duty. You carry this to the clerk of the errors to be allowed, for which you pay 2*l.* 2*s.* 6*d.* whereupon he gives you a note directed to the attorney of the adverſe party, ſignifying his allowance of the writ, which notice you muſt deliver accordingly. *Of allowing it.*

No execution ſhall be ſtayed upon any writ of error, or *Superſedeas* thereupon to be ſued for the reverſing of any judgment given in any action, or bill of debt, upon any *ſingle bond for debt*, or upon any *obligation, with condition for the payment of money only*; or upon any action or bill of *debt for rent*, or upon any *contract*, unleſs ſuch perſon in whoſe name ſuch writ of error ſhall be brought, with two ſufficient ſureties, ſuch as the court (wherein *Writ of error no* Superſedeas *on any ſingle bond for debt, bond conditioned for payment of money only, debt for rent, or on any contract. Unleſs bail put in.*

(wherein ſuch judgment is given) ſhall allow of, ſhall firſt before ſuch ſtay made, or *Superſedeas* awarded, be bound unto the party for whom ſuch judgment is given, by recognizance to be acknowledged in the ſame court, in double the ſum adjudged to be recovered by the ſaid former judgment, to proſecute the ſaid writ of error with effect; and alſo to pay (if the ſaid judgment be affirmed) the debt, damages and coſts adjudged upon the former judgment; and all coſts and damages to be awarded for the ſame delaying of execution. *Stat 3 Jac. 1. c. 8.*

To proſecute with effect. Pay the debt, &c.

And coſts for delay of execution.

Writ of error no Superſedeas *after verdict. On action on Stat. 2 Ed. 6. Promiſe for payment of money, trover, covenant, detinue and treſpaſs.*

And no execution ſhall be ſtayed by any writ of error, or *Superſedeas* thereupon, after any verdict and judgment thereupon obtained in any action of *debt*, on ſtatute 2 *Edw. 6.* for *not ſetting forth of tithes*, nor in any action upon the *caſe*, *upon* any *promiſe for payment of money*, action *ſur trover*, action of *covenant*, *detinue* and *treſpaſs*, unleſs ſuch recognizance, and in ſuch manner, as by the ſaid act *3 Jac. 1.* is directed, ſhall be acknowledged in the ſaid court where ſuch judgment is given. The ſecond *ſtat. 13 Car. 2. c. 2. ſ. 8, 9.*

Unleſs bail as aforeſaid.

On writ of error after verdict, double coſts if judgment affirmed.

And if any perſon ſhall ſue or proſecute any writ of error for reverſal of any judgment whatſoever given *after any verdict*, and the ſaid judgment ſhall be affirmed, then ſuch perſon ſhall pay unto the defendant in the ſaid writ of error his double coſts, to be aſſeſſed by the court where the writ of error ſhall be depending, for the delaying of execution. *Same ſtatute, ſ. 10.*

And

Writ of error no Superſedeas after verdict in any action perſonal, unleſs bail as aforeſaid.

And no execution ſhall be ſtayed by writ of error, or *Superſedeas* thereupon, after verdict and judgment thereupon, in any action perſonal whatſoever, unleſs a recognizance with condition, according to the ſtatute 3 *Jac.* 1. ſhall be firſt acknowledged in the court where the judgment ſhall be given. In

Nor after verdict in dower or ejectment.

writs of error brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution ſhall be ſtayed, unleſs the plaintiff in ſuch writ of

Unleſs plt. in error be bound, &c.

error ſhall be bound unto the defendant in ſuch writ of dower, or action of *ejectione firmæ*, in ſuch reaſonable ſum as the court to which ſuch writ of error ſhall be directed, ſhall think fit, with condition that if the judgment ſhall be affirmed, or that the ſaid

On affirmance, diſcontinuance or nonſuit, to pay coſts.

writ of error be diſcontinued in default of the plaintiff therein, or that the ſaid plaintiff be nonſuit in ſuch writ of error, that then the plaintiff ſhall pay ſuch coſts, damages, and ſum and ſums of money, as ſhall be awarded upon ſuch judgment affirmed, diſcontinuance, or nonſuit had. *Stat.* 16, 17 *Car.* 2. *c.* 8. *ſ.* 3.

On affirmance, &c. writ to inquire of the meſne profits, &c.

The court, wherein ſuch execution ought to be granted upon ſuch affirmance, diſcontinuance or nonſuit, ſhall iſſue a writ to inquire, as well of the meſne profits, as of the damages by any waſte committed after the firſt judgment in dower or *ejectione firmæ*; and upon the return thereof, judgment ſhall be given and execution awarded for ſuch meſne profits and damages, and alſo for coſts of ſuit. *Same ſtat. ſ.* 4.

This

This act not to extend to executors, &c.

This act not to extend to any writ of error to be brought by any executor or adminiſtrator, nor to any action popular, nor to any action upon any penal law or ſtatute (except action of debt for not ſetting forth of tithes) nor to any indictment, preſentment, inquiſition, information or appeal. *Same ſtat. ſ.* 5.

Penal ſtatutes, &c.

Nor indictments, &c.

In what penalty recognizance ſhall be taken on a writ of error after verdict in ejectment, or dower.

To aſcertain the practice of this court, and ſettle for the future what ſhall be deemed a reaſonable ſum for the penalty of the recognizance, to be entered into where a writ of error is brought upon any judgment after verdict in ejectment or dower; it is ordered, that the recognizance to be entered into on every ſuch occaſion, purſuant to the ſtatute 16 & 17 *Car.* 2. ſhall be taken in a penal ſum, to the amount of two years value of the premiſſes compriſed in the verdict; and double coſts recovered, ſubject to the condition mentioned in the ſaid act. *Trin.* 24 & 25 *Geo.* 2.

No bail in error on bond for performance of covenants, tho' condition did not appear on record.

Judgment in debt on a bond conditioned for the performance of covenants, but notwithſtanding the condition did not appear on the record, the court held, that the matter of bail being examinable by affidavit, and the bond being conditioned as above, bail was not required on the writ of error. *Spinks* and *Bird*, *Mich.* 10 *Geo.* 2. *Barnes* 72.

Bail in error on judgment upon bond for payment of money mentioned in a mortgage.

Judgment in debt on bond conditioned for payment of 300 *l.* mentioned in a ſurrender in mortgage of copyhold lands; writ of error brought, and bail ordered. *Woods* and *Armſtrong*, *Mich.* 12 *Geo.* 2. *Barnes* 78.

Scire

Scire facias on a recognizance of bail in error, award of execution thereon againſt the bail, who bring a writ of error upon that award of execution. No bail is required on this writ of error, for that would be bail *ad infinitum.*

No bail required on writ of error brought by bail in error.

No attorney ſhall make out any execution *Non obſtante brevi de errore* until he has had a certificate from the clerk of the errors, that the record is not removed, and a *Non pros* thereupon duly ſigned. *Trin.* 28 *Car.* 2.

No execution Non obſtante errore, *without certificate of* Non pros *ſigned.*

All writs of error ſhall be forthwith delivered to the clerk of the errors for the time being; and no one ſhall be obliged to forbear ſuing out execution by pretence of any writ of error, before the writ of error ſhall be delivered to the clerk of the errors. *Same rule*, and *Mich.* 28 *Car.* 2.

Writ of error to be delivered to the clerk of the errors. And till then no ſtay of execution.

Held, that a writ of error is not a *Superſedeas* from the time of the ſealing, but from the delivery to the clerk of the errors. *Mich.* 15 *Geo.* 2. *C. B. Meriton* v. *Stevens. Barnes* 205. *Hil.* 18 *Geo.* 2. *C. B. Sykes* v. *Dawſon. Barnes* 209.

And in caſes where ſpecial bail is required, unleſs the plaintiff on ſuch writ of error ſhall, within four days after the delivery thereof, put in bail according to law, and obtain a writ of *Superſedeas* thereon, the defendant may proceed to execution notwithſtanding ſuch writ of error. *Mich.* 28 *Car.* 2.

Where bail required, bail to be put in within four days.

Aliter *execution.*

In all caſes where bail ſhall be filed on writs of error, ſuch bail ſhall likewiſe be perfected within four days after exception taken thereto; or in default thereof the clerk of the errors

Bail to be perfected in 4 days after exception.

errors ſhall *Non pros* ſuch writ of error. *Mich.* 6 *Geo.* 2.

No execution for not tranſcribing without certificate.

After a writ of error ſhall be duly allowed, and a *Superſedeas* thereupon obtained, no execution ſhall be made for not tranſcribing the record into the *King's Bench* without a certificate in writing by the clerk of the errors, that the plaintiff in ſuch writ of error made default in tranſcribing the record into the *King's Bench*, according to a rule of court to be firſt given of courſe. *Mich.* 28 *Car.* 2.

Of perfecting bail on rule for better bail in vac tion.

If a rule for better bail in error is ſerved in vacation, the plaintiff in error has not of courſe, till the next term to perfect his bail, but ought to juſtify before a judge; and if the defendant in error be not ſatisfied with that, then the plaintiff in error, having done every thing in his power, has until the next term to perfect his bail.

Time refuſed to perfect bail in error, becauſe no real error ſuggeſted. 2 *Wilſ.* 144.

Execution after error, tho' before notice, void.

An execution ſued out after a writ of error allowed is void, whether the party have notice of the writ of error or not; but if he have not notice of it, he is not puniſhable for a contempt, though reſtitution ought to be made. *Smith* v. *Cave*, 3 *Lev.* 312.

Debt on judgment after error.

After a writ of error brought on a judgment in this court, an action of debt may be brought upon the judgment pending the writ of error; but then the plaintiff ought to declare on the whole matter, *viz.* of the judgment in this court, of the removal by writ of error, and that the judgment is ſtill in full force, *prout patet*

patet per record' inde in banco regis. Gale v. *Till*, 3 *Lev.* 396. *V. antea fol.*

Debt on judgment pending error, plt. may proceed to judgment, but can't have execution if deft. applies.

If an action of debt be brought on a judgment pending a writ of error in the original action, the plaintiff may proceed to judgment, but not to take out execution till the writ of error be determined. *Coe* and *Allam*, *Pract. Reg. C. P.* 55. *Trin.* 9 *Geo.* 1. *Jackſon* and *Ducket*, *Pract. Reg. C. P.* 54. *Rep. & Caſ. of Pract. C. P.* 32. *Hil.* 13 *Geo.* 1. But the plaintiff may take out execution notwithſtanding the writ of error, if the defendant does not apply to the court to ſtay execution. *Humphreys* and *Daniel*, *Barnes* 202. *Rep. and Caſ. of Pract. C. P.* 129. *Pract. Reg. C. P.* 183. *Paſ.* 9 *Geo.* 2. The plaintiff, pending a writ of error, cannot have an *Exigent poſt ca. ſa.* on the original judgment. *Spinks* and *Bird*. *Paſ.* 10 *Geo.* 2. *Barnes* 314. *Pract. Reg. C. P.* 184.

Debt on recognizance againſt bail, pending error, proceedings ſtayed.

If a writ of error be brought on a judgment, and the plaintiff brings an action of debt on the recognizance againſt the bail in the original action, pending the writ of error, the court will ſtay the proceedings till the writ of error is determined; for if the plaintiff might proceed to judgment againſt the bail, they would be thereby deprived of an opportunity of ſurrendering the defendant. *Newman* and *Butterworth*, *Hil.* 8 *Geo.* 2. *Barnes* 66. *Rep. and Caſ. of Pract. C. P.* 112 *Pract. Reg. C. P.* 82.

If writ of error abates by death of chief juſtice, execu-

If a writ of error be brought on a judgment in this court, and the chief juſtice dies [before he has returned the writ of error] whereby

tion with leave of the court. whereby the writ is abated, execution may be taken out with leave of the court; but if taken out without leave, it will be set aside, and restitution ordered. *Cranborne* and *Quenel*, *Thornton* and *Hays*, *Pract. Reg. C. P.* 195. *Barnes* 201. *Hil.* 9 *Geo.* 2.

Of transcribing. At the return of the writ of error a rule must be given with the clerk of the errors, by the defendant in error, for the plaintiff to transcribe the writ of error into the *King's Bench*, which rule will be out in eight days after service thereof on the plaintiff in error, or his attorney; and if the record be not transcribed in eight days, the clerk of the errors will sign a *Non pros.* The rule to transcribe may be served on the plaintiff in error, and need not be served on his attorney.

What time the clerk of the errors takes to transcribe. If the writ of error be returnable the first day of a term, the clerk of the errors takes the whole term to transcribe the record in, and does not carry in the transcript until the last day of that term; and if the writ of error be returnable on any other return than the first return of a term, he takes the whole subsequent vacation to transcribe in, and carries in the record on the first day of the next term.

Though writ of error be *non-prossed*, for want of transcribing record, yet the bail, being bound to prosecute writ of error with effect, will be liable. *Barnes* 499.

After the transcript is carried in, the whole proceedings are in the *King's Bench*. See the *Attorney's Practice in the Court of King's Bench.*

Leave to file warrant of attorney after The plaintiff had obtained judgment in *Trin.* 1726. Error was brought in *Trin.* 1727

1727, and the want of a warrant of attorney had been assigned for error, and a *Certiorari* taken out and returned, that there was no warrant of attorney; whereupon the plaintiff applied to the court for leave to file his warrant of attorney. After hearing *Chesshyre pro Quer.* and *Whitaker* and *Raby pro Def.* and great consideration, the court refused to let the warrant of attorney be filed. *Nipson* and *Quilter*, *Mich.* 1 *Geo.* 2.

error brought denied. Pract. Reg. C. P. 197.

The plaintiff has brought a *Scire facias* on a recognizance of bail, and had filed a warrant of attorney *de pl'ito transgr. super casum super scire facias*; error was brought, and the want of warrant of attorney assigned for error, and a *Certiorari* returned, that there was no warrant of attorney. The plaintiff moved to amend the warrant of attorney, by making it *de placito debiti super Sci. fa.* and upon hearing *Branthwayte pro Quer.* the court gave leave to amend. *Societas Belgica ad indos occidentales negotians* v. *Henriques & al'*, *Pract. Reg. C. P.* 25. *Pas.* 1 *Geo.* 2: 2 *Brownl.* 167. 2 *Coke* 135.

Warrant of attorney amended after error brought.

After error brought the record was ordered to be amended, by inserting at the top of the roll *from the day of St. Martin* in *fifteen days*, *in the ninth year*, &c. The cause of action having arose in *Michaelmas* term. *Deacon* and *Vivian*, *Pas.* 9 *Geo.* 2. *Barnes* 7.

Record amended after error brought.

Judgment roll amended after error brought, and *In nullo est erratum* pleaded, by striking out the words *ought to*, and inserting the word *do*, the judgment being, that the plaintiff *ought to recover*, instead of *do recover*: This

The like on payment of costs, if plaintiff in error did not proceed.

amendment was ordered without coſts, if the plaintiff in error ſhould proceed; *aliter* coſts were to be paid. *Foſter* and *Blackwell*, *Paſ.* 10 *Geo.* 2. *Barnes* 7, 8.

No diſcontinuance after error without coſts.

Judgment *pro Quer.* on demurrer, but not entered on record. Error brought, the court refuſed to let the plaintiff diſcontinue without paying the coſts on the writ of error. *Pym* and *Warren*, *Mich.* 6 *Geo.* 2. *Barnes* 169.

Said that a *Scire facias* on a recognizance of bail upon a writ of error need not ſet forth the condition of the recognizance. *Hil.* 17 *Geo.* 2. *C. B. Malland* v. *Jenkins*. *Barnes* 93.

COSTS on ERROR brought in the EXCHEQUER CHAMBER.

Hilary Term, 1778.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching if writ of error allowed, and when returnable	0	0	0	0	1	8	0	3	4
Rule to transcribe	0	2	4	0	2	4	0	2	4
Copy and service	0	0	0	0	1	0	0	2	0
Inquiring if plaintiff had transcribed, and forwarding same	0	0	0	0	1	8	0	3	4
Paid taking transcript out of office	0	2	6	0	2	6	0	2	6
Attending at Westminster to examine transcript	0	0	0	0	3	4	0	6	8
Paid for keys of Treasury, and to examine same	0	7	6	0	7	6	0	7	6
Paid clerk of errors in Exchcq. chamber for copy of error and record	1	16	0	1	16	0	1	16	0
Fair copy at 2*d.* a folio for agent, and 8*d.* for attorney	0	0	0	0	8	8	0	17	4
Examining same with record	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	3	4	0	6	8
Letters and messengers	0	0	0	0	1	0	0	2	0

Eaſter Term following.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Rule to alledge diminution *	0	2	4	0	2	4	0	2	4
Copy and ſervice	0	0	0	0	1	0	0	2	0
Term fee	0	0	0	0	3	4	0	6	8
Letters and meſſengers	0	0	0	0	1	0	0	2	0

Michaelmas Term following.

Attending ſeveral times to ſee if errors aſſigned	0	0	0	0	1	8	0	3	4
Copy aſſignment of errors	0	0	0	0	1	0	0	2	0
Plea in *nullo eſt erratum*	0	0	0	0	1	6	0	3	0
Copy to file, duty, and paid	0	2	6	0	3	6	0	4	6
Paid ſetting down cauſe for affirmance	0	9	6	0	9	6	0	9	6
Copy paper book, fo. 60	0	0	0	0	10	0	1	0	0
Attending to examine ſame	0	0	0	0	3	4	0	6	8
Attending court on affirmance	0	0	0	0	3	4	0	6	8
Notice of taxing coſts	0	0	0	0	1	0	0	2	0
Bill of coſts, and copy	0	0	0	0	1	0	0	2	0
Attending taxation, and to examine *remittitur*	0	0	0	0	3	4	0	6	8

* Reſt of money paid for this rule is included in the charge for copy of writ and record.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid for affirmance	3	18	6	3	18	6	3	18	6
Entry thereof and *remittitur*	0	0	0	0	2	8	0	5	4
Entry on roll	0	0	0	0	1	4	0	2	8
Entering and examining ſame at Treaſury	0	0	0	0	3	4	0	6	8
Paid clerk there	0	3	6	0	3	6	0	3	6
Term fee	0	0	0	0	3	4	0	6	8
Letters and meſſengers	0	0	0	0	1	0	0	2	0

If Writ of ERROR ſhould happen to be *non-proſſed* for Diſobedience to any of the Rules, the Items of Diſburſements and Fees will be nearly as follow.

Trinity Term, 1778.

No Diminution being alledged, or no Errors being aſſigned, as Caſe may be.

Attending court, and motion for *Non pros*	0	0	0	0	3	4	0	6	8
Paid	4	0	0	4	0	0	4	0	0
Bill of coſts and copy	0	0	0	0	1	3	0	2	6
Attending taxation, and to examine *remittitur*	0	0	0	0	3	4	0	6	8
Entry, and engroſſing ſame on roll, attending, *&c.*	0	0	0	0	4	6	0	9	0
Paid clerk of Treaſury	0	3	0	0	3	0	0	3	0
Term fee, letters, *&c.*	0	0	0	0	4	4	0	8	8

Replevin.

THIS ſuit may be by original out of Chancery returnable in this court, but is moſt uſually commenced in the county court, and removed into this court by writ of *Recordari facias loquelam* commonly called a *Refalo*, taking its name from the firſt ſyllable of each word in the name of the writ, *viz.* Recordari facias loquelam; but if the ſuit be firſt commenced in an inferior court of record, as in *London*, then it muſt be removed into this court by writ of *Certiorari*, for the *Refalo* doth not go to a court of record, becauſe there the ſuit is already recorded. In order for a *Refalo* you make out a *Præcipe* to the curſitor of the proper county in the following form, *viz.*

Eſſex, *to wit.* *REFALO* for (either plaintiff or defendant, naming them) of a plaint between *Richard Knightsbridge* againſt *John White* and *William Sell*, for taking and unjuſtly detaining the cattle, goods and chattels of the ſaid *Richard*.

Returnable from Eaſter *day in* 15 *days.*

This *Præcipe* you deliver to the curſitor who will make out the writ, and then you carry it to the under-ſheriff who will return it.

The ſuit may be removed either by the plaintiff or defendant.

If

If the plaintiff in replevin brings the *Recordari facias loquelam*, he files it, when returned, with the filacer of the county, and gives a rule for the defendant to appear, and in default thereof may have a *Pone*, *Distringas*, *&c.* *Of proceeding if* Refalo *brought by plaintiff.*

If the defendant brings the *Recordari facias loquelam*, he also files it, when returned, with the filacer, and gives a rule for the plaintiff in replevin to declare, and in default of a declaration may have a writ of return *Habend.* *If by defendant.*

If the defendant doth not file the *Recordari facias loquelam* at the day of the return, or at least on the appearance day of the return, he must give the plaintiff's attorney notice of filing it; it is said there is no occasion to call for a declaration; however, it is but fair practice and the safer method, to call upon the plaintiff's attorney for the declaration. *Where notice of filing* Refalo, *and calling for a declaration necessary.*

If the defendant brings the *Refalo* and doth not get it returned, and file it within two terms, the plaintiff may have a certificate thereof from the filacer, and thereupon the cursitor will make him out a writ of *Procedendo*, upon which he may proceed in the court below. *When* Procedendo *shall go.*

See the second volume for declarations, *&c.* in replevin.

The particular place of taking the goods ought to be mentioned in every declaration in replevin. — And the plea of *Cepit in alio loco* is a plea in bar, and not in abatement, and

and doth not require an affidavit, nor to be pleaded in four days after delivering the declaration.

Motion was made to ſet aſide judgment, ſigned by defendant in replevin, for want of a plea in bar: caſe was, that defendant had pleaded an avowry, to which plaintiff put in a plea in bar; afterwards defendant obtained order on ſummons to amend avowry, on payment of coſts; both which being done, defendant gave new rule for plaintiff to plead in bar *de novo*; and then demanded plea in bar afreſh; plaintiff paid no regard thereto; whereupon defendant ſigned judgment, which plaintiff prayed might be ſet aſide; queſtion put by court was, how the practice ſtood in this caſe? which was anſwered by Mr. prothonotary *Dickins*, to be, that after rule to plead in bar *de novo*, and demand made, and no ſuch plea by plaintiff, old plea in bar ſtood as before, whereto defendant ought to have replied, inſtead of ſigning judgment; which was therefore ſet aſide. *Groſe* for plaintiff; *Walker* for defendant. *Hil.* term, 17 *Geo.* III. *C. B. A. D.* 1777. MS. notes.

A writ of ſecond deliverance is in the nature of a *Superſedeas* to the return *Habend.* if brought before the return *Habend.* be executed.

Double coſts not allowed on a nonſuit in *replevin*, where plaintiff declared for taking and detaining an ox, and defendant avowed the taking as a ſeizure for an heriot cuſtom, claiming no right to diſtrain; *aliter* had it been

been for heriot ſervice, for that cattle are diſtrainable. *Barnes* 148.

Nonſuit in replevin; avowant executed a writ of inquiry, after a writ of ſecond deliverance, and good. *Wilſ. Rep. C. B.* 116, *Barnes* 426.

Recordari facias loquelam.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. We command you, that in your full county you cauſe the plaint to be recorded, which is the ſame county, without our writ, between *Richard Knightsbridge*, and *John White*, and *William Sell*, of the cattle, goods and chattels of the ſaid *Richard*, taken and unjuſtly detained as it is ſaid, and that you have the ſaid record before our juſtices at *Weſtminſter*, from *Eaſter* day in fifteen days under your ſeal, and the ſeals of four lawful knights of the ſame county, of ſuch as ſhall be preſent at the ſaid record, and that you prefix the ſame day to the parties, that then they may be there ready to proceed in the ſaid plaint as ſhall be juſt; and have you there the names of the ſaid four knights, and this writ. Witneſs ourſelf at *Weſtminſter* the ſixth day of *March* in the ſeventh year of our reign. Let execution be done of this writ, if the ſaid *Richard* deſire it, otherwiſe not.

	s.	*d.*
Duty	2	0
Curſitor	2	6
	4	6

Browne.

By

The return. By virtue of this writ to me directed in my full county court, held for the county of *Eſſex* or *Chelmsford* in the county aforeſaid, the one and thirtieth day of *March* in the year within mentioned, I cauſed the plaint between the parties within named to be recorded, and have that record ready before the juſtices of our lord the king at *Weſtminſter* at the day within mentioned, under my ſeal, and the ſeals of *Richard Cox*, *Charles Tabor*, *Henry Burdock*, and *Samuel Barwick*, four lawful knights of the ſame county, who were preſent at the recording the ſaid plaint; and I have prefixed the ſame day to the ſaid parties, that they be then before the ſaid juſtices of our ſovereign lord the king at *Weſtminſter*, to proceed therein according to juſtice as by the ſame writ I am commanded.

The reſt of the execution of this writ appears in a certain ſchedule to the ſaid writ annexed.

The anſwer of
James Hannol, eſq; ſheriff.

Eſſex, *to wit.* AT my county court held at *Chelmsford* in the county aforeſaid, the fifth day of *February* in the year of our Lord 1739, (among other things) it is thus recorded.

Richard Knightsbridge complains of *John White*, and *William Sell*, of a plea of taking and unjuſtly detaining of his cattle, goods and chattels, *&c.*

Pledges

Pleges to proſecute, { *John Manſfield* of *Hoſier Lane*, *London*, watch-ſpring maker. *John Beſuth* of *Stratford Langthorne* in the county of *Eſſex*, gardener.

Thomas Bowes, eſq; ſheriff.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. Put by ſureties and ſafe pledges, *John White* and *William Sell*, that they be before our juſtices at *Weſtminſter*, from the day of the holy *Trinity* in three weeks, to anſwer to *Richard Knightſbridge* of a plea wherefore they took the cattle, goods and chattels of the ſaid *Richard*, and them unjuſtly detained againſt gages and pledges, as he ſaith, and to ſhew, wherefore they have not appeared in our court before our juſtices at *Weſtminſter*, from *Eaſter* day in fifteen days laſt paſt, as the day prefixed to them; and have you there the names of the pledges and this writ. Witneſs Sir *William De Grey*, knt. at *Weſtminſter*, the 29th day of *May* in the 7th year of our reign. *Boycott.*

6 *June* 1777. *R.* by *R.*

Pone *in replevin.*

COSTS

COSTS for PLAINTIFF in REPLEVIN.

Hilary Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions and warrant to ſue	0	0	0	0	2	2	0	4	4
Attending execution of the replevin bond	0	0	0	0	1	8	0	3	4
Paid ſheriff for ſame	1	1	0	1	1	0	1	1	0

Eaſter Term following.

Paid entring plaint	0	3	8	0	3	8	0	3	8
Attending county court	0	0	0	0	1	8	0	3	4
Searching for *Recordari*	0	0	0	0	1	8	0	3	4
Declaration fo. 3	0	0	0	0	1	6	0	3	0
Engroſſing duty, warrant, &c.	0	0	3	0	1	1	0	1	11
Entry on Roll	0	0	0	0	0	6	0	1	0
Rule to avow	0	1	10	0	2	2	0	2	6
Searching for and drawing avowry	0	0	0	0	2	8	0	5	4
Copy avowry fo. 10	0	0	0	0	1	8	0	3	4
Paid adviſing with council thereon, and on plea in bar	0	10	6	0	10	6	0	10	6
Attending him	0	0	0	0	1	8	0	3	4

Search-

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching for rule to plead in bar	0	0	0	0	1	8	0	3	4
Summons to amend declaration	0	2	0	0	2	0	0	2	0
Copy and ſervice	0	0	0	0	1	0	0	2	0
Attending thereon	0	0	0	0	1	8	0	3	4
Order, copy and ſervice	0	2	0	0	3	0	0	4	0
Appointment to tax coſts, copy, and ſervice	0	2	0	0	3	0	0	4	0
Taxing ſame	0	0	0	0	1	8	0	3	4
Paid coſts of amendment	0	18	0	0	18	0	0	18	0
Attending to amend declaration and to pay coſts taxed	0	0	0	0	1	8	0	3	4
Term, fee, letters, &c.	0	0	0	0	3	6	0	7	0

Trinity Term, 1778.

New rule to avow	0	1	10	0	2	2	0	2	6
Searching for and demanding avowry	0	0	0	0	2	8	0	5	4
Copy avowry, fo. 10	0	0	0	0	1	8	0	3	4
Searching for rule to plead in bar	0	0	0	0	1	8	0	3	4
Plea in bar, fo. 6	0	0	0	0	3	0	0	6	0
Fee to council for ſigning ſame	0	10	6	0	10	6	0	10	6

Attending

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending him for that purpose	0	0	0	0	1	8	0	3	4
Engrossing and duty	0	0	3	0	1	3	0	2	3
Paid for entry	0	4	0	0	4	0	0	4	0
Paid for rule to reply	0	1	10	0	2	2	0	2	6
Searching for and demanding replication	0	0	0	0	2	8	0	5	4
Copy replication	0	0	0	0	0	6	0	1	0
Searching for rule to rejoin	0	0	0	0	1	8	0	3	4
Demurrer to replication, fo. 3	0	0	0	0	1	6	0	3	0
Fee to council for signing	0	10	6	0	10	6	0	10	6
Attending him thereon	0	0	0	0	1	8	0	3	4
Engrossing and duty	0	0	3	0	0	9	0	1	3
Paid entring demurrer	0	2	0	0	2	0	0	2	0
Rule to rejoin in demurrer	0	1	10	0	2	2	0	2	6
Searching for and demanding joinder	0	0	0	0	1	8	0	3	4
Term fee, letters, &c.	0	0	0	0	3	6	0	7	0

Costs for Defendant in Replevin, on stat. 11 Geo. II. chap. 19. sect. 21. which orders double costs to be paid by Plaintiff, on his being non-suited, &c.

	Out of Packet			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending in *Bell Lane, Paddington*, and making a distress on the goods of *James Agate* the tenant, notice thereof with inventory	0	0	0	0	10	6	1	1	0
Two fair copies of inventory, to serve and keep	0	0	0	0	3	4	0	6	8
Searching at sheriff's office whether replevin brought, when found there was	0	0	0	0	1	8	0	3	4
Paid man for four days possession and board 3*s.* 6*d.* a day*	0	14	0	0	14	0	0	14	0
In sheriff's court.									

* If man does not find himself in board, he is intitled to only 2*s.* 6*d.* a day.

Trinity Vacation, 177[illegible].

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions and warrant to defend	0	0	0	0	2	2	0	4	4
Entring appearance	0	2	0	0	3	8	0	5	4
Searching for bail	0	0	0	0	1	8	0	3	4
Letters, &c.	0	0	0	0	0	6	0	1	0
In this court									

Michaelmas Term, following.

Precipe for *Re. Fa. Lo.* to remove plaintiff and copy	0	0	0	0	0	6	0	1	0
Paid curſitor for ſame	0	4	6	0	4	6	0	4	6
Fee thereon	0	0	0	0	1	8	0	3	4
Attending ſheriff therewith, and for return	0	0	0	0	1	8	0	3	4
Paid ſheriff for return, and for ſummoning defendant	0	14	6	0	14	6	0	14	6
Returning and filing *Re. Fa. Lo.* with filacer	0	2	0	0	2	6	0	3	6
Entring appearance	0	2	4	0	4	0	0	5	10
Rule to declare	0	1	10	0	2	2	0	2	6
Letters, &c.	0	0	0	0	0	6	0	1	0

Hilary Term, 1779.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching for and demanding declaration	0	0	0	0	2	8	0	5	4
Judgment of *Non-pros.*	0	0	0	0	1	6	0	3	0
Paid for ſtamp	0	5	1	0	5	1	0	5	1
Entry on roll	0	0	0	0	0	6	0	1	0
Paid prothonotary ſigning judgment	0	6	0	0	6	0	0	6	0
Writ of *retorn. habend.*	0	3	2	0	5	10	0	8	6
Attending ſheriff therewith, and for return	0	0	0	0	1	8	0	3	4
Paid for return, "*elongata*"	0	3	4	0	3	4	0	3	4
Paid filing ſame	0	1	0	0	1	0	0	1	0
Term fee (*Non-pros* ſigned)	0	0	0	0	3	4	0	6	8
Letters, &c.	0	0	0	0	1	0	0	2	0

Proceedings on Replevin Bond.

Eaſter Term, 1778.

Inſtructions and warrant to proceed on recognizance of bail	0	0	0	0	2	2	0	4	4
Attending ſheriff for licence to proceed,									

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
and ſigning his indemnity	0	0	0	0	1	8	0	3	4
Paid for ſame	0	6	8	0	6	8	0	6	8
Copy replevin bond, folio 8.	0	0	0	0	0	8	0	1	4
Capias	0	4	2	0	7	7	0	11	0
Many journies in order to ſerve ſame	0	0	0	0	2	6	0	5	0
Cap. by contin.	0	3	5	0	6	7	0	9	8
Endeavoring to ſerve ſame	0	0	0	0	2	6	0	5	0

Fines

Fines.

FINES are uſed as common aſſurances for the conveyance of lands, and are of ſeveral ſorts, *viz.*

1. *Sur cognizance de droit, come ceo que il ad de ſon done.*
2. *Sur done, grant et render.*
3. *Sur cognizance de droit tantum.*
4. *Sur conceſſit.*
5. *Sur releaſe.*

Theſe are for ſeveral purpoſes, but the firſt is the moſt uſual, and of that only we ſhall treat here, the reſt being but ſeldom made uſe of.

Fines are taken either with or without a *Dedimus poteſtatem.* *Methods of taking a fine.*

Without a Dedimus.

1. In court, or
2. By the chief juſtice out of court.

By Dedimus.

1. By any of the judges, or by a ſerjeant at law (and in this caſe a *Dedimus* may be taken out after the caption, but before the judge or ſerjeant will return the caption;) or
2. By commiſſioners named in the *Dedimus*, and therefore in this caſe the *Dedimus* muſt be taken out before the caption.

Of passing a fine in court.

In this case you get the writ of covenant before the caption, and for that purpose you make out a *Præcipe* to the cursitor in the following form, according to the nature of the case.

Præcipe *for writ of covenant.*

Middlesex, *to wit*, Command *A. B.* gentleman and *E.* his wife, that justly, *&c.* they perform to *C. D.* the covenant made between them, of one messuage and one garden, with appurtenances in *B.* and unless, *&c. Returnable*, &c.

After you have got the writ of covenant, for which you pay 7*s.* 6*d.* you ingross the *Præcipe* and concord in parchment in the following form.

Præcipe *and concord.*

Middlesex, *to wit*, Command *A. B.* gentleman, and *E.* his wife, that justly, *&c.* they perform to *C. D.* the covenant made between them, of one messuage and one garden, with the appurtenances in *B.* and unless, *&c.*

And the agreement is such, *to wit*, that the aforesaid *A.* and *E.* have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said *C.* as those which the said *C.* hath of the gift of the aforesaid *A.* and *E.* and these they have remised and quit-claimed from them the

the ſaid *A.* and *E.* and the heirs of the ſaid *A.* to the aforeſaid *C.* and his heirs for ever: And moreover the ſaid *A.* and *E.* have granted for them and the heirs of the ſaid *A.* that they will warrant to the aforeſaid *C.* and his heirs, the aforeſaid tenements, with the appurtenances, againſt them the ſaid *A.* and *E.* and the heirs of the ſaid *A.* for ever: And for this, *&c.*

You then go with the conuſors to *Weſtminſter*, and give the writ, *Præcipe* and concord, to a ſerjeant's clerk, and he will get it paſſed for you; the wife muſt be examined by one of the judges, as to her free conſent, without coercion of her huſband.

If the fine be to be acknowledged before the chief juſtice, a judge, or ſerjeant at law, you ingroſs the *Praecipe* and concord on parchment, as before, and make another copy of them on paper, and write under each of them on the left hand ſide thus: *Before the chief juſtice, a judge, or ſerjeant.*

Taken and acknowledged the day of in the eighth year of the reign of our ſovereign lord *George* the third, now king of *Great Britain*, &c. Before me.

The concord ingroſſed on parchment, and the paper copy thereof, muſt be ſigned by the cognizors; you then go with the cognizors before the chief juſtice, judge, or ſerjeant, who will take the caption, examining the wife as before; the paper copy is kept by

the clerk of the chief justice, judge, or serjeant; you pay for the caption 12*s.* 6*d.*

If the fine be taken by a judge (not being the chief justice,) or by a serjeant, you sue out a *Dedimus potestatem*, and for that purpose you make out a *Præcipe* for the cursitor as followeth:

Middlesex, *to wit*, Command *A. B.* gentleman, and *E.* his wife, that justly, *&c.* they perform to *C. D.* the covenant made between them of one messuage, and one garden, with the appurtenances, in *B.* And unless, *&c.*

De. po. To [*naming the judge or serjeant*:] You pay for this *Dedimus* 10*s.* 8*d.* And deliver it to the judge, or serjeant's clerk, who will get it returned for you.

If the fine be to be taken by special commissioners, you make a *Præcipe* for the cursitor in the following form, according to the nature of your case.

Essex, *to wit*, Command *C. K.* and *L.* his wife, that justly, *&c.* they perform to *D. B.* gentleman, the covenant, *&c.* of twenty acres of land with the appurtenances in *C.* And unless, *&c.*

De. Po. directed to { *J. B.* knight. / *R. R.* / *C. M.* / *S. W.* / *J. W.* }

You

You pay for this *Dedimus* 1 *l.* 5*s.* 8*d.*

Then you ingroſs the *Præcipe* and concord in parchment, in this form:

Eſſex, *to wit*, Command *C. K.* and *L.* his wife, that juſtly, *&c.* they perform to *D. B.* the covenant made between them of twenty acres of land, with the appurtenances in *C.* And unleſs, *&c.*

And the agreement is ſuch, that is to ſay, that the aforeſaid *C.* and *L.* have acknowledged the aforeſaid tenements, with the appurtenances, to be the right of him the ſaid *D.* as thoſe which the ſaid *D.* hath of the gift of the aforeſaid *C.* and *L.* and thoſe they have remiſed and quit-claimed from them the ſaid *C.* and *L.* and the heirs of the ſaid *C.* to the aforeſaid *D.* and his heirs, for ever. And moreover the ſaid *C.* and *L.* have granted for them and the heirs of the ſaid *C.* that they will warrant to the aforeſaid *D.* and his heirs, the aforeſaid tenements, with the appurtenances, againſt them the ſaid *C.* and *L.* and the heirs of the ſaid *C.* for ever. And for this, *&c.*

Taken and acknowledged the day of in the eighth year of the reign of our ſovereign lord *George* the third, now king of *Great Britain*, &c. Before

Any two of the commiſſioners may take the fine, examining the wife ſeparate and apart from the huſband, as to her free conſent,

ſent, without coercion from her huſband, to paſs the fine, and part with her intereſt in the lands, telling her the conſequence of her acknowledging the fine; the *Præcipe* and concord ſhould be read to the cognizors, and then ſigned by them, and the commiſſioners ſign the caption and then annex the *Præcipe* and concord to the *Dedimus*, and the commiſſioners ſubſcribe their names to the return, which is to be indorſed on the back of the *Dedimus* in the following words, *viz.*

The execution of this writ appears in a certain ſchedule hereunto annexed.

Vide poſtea the *rule*; as the affidavit neceſſary of the due taking of a fine by *Dedimus*, and a judge's *Allocatur* thereon.

As to paſſing the fine through the offices; you carry the writ of covenant to the *Alienation-Office* in the *King's Bench Walks* in the *Temple*, to compound for the fine, for which the commiſſioners have fixed rules, according to the parcels in the writ; if a commiſſioner be preſent, you compound for the fine immediately, and pay the fine and the fees, the latter generally about 2*s*. The clerk keeps the writ generally two days to enter it in the office-books; having got the writ from the *Alienation-Office*, you ingroſs a warrant of attorney on parchment in the following form, according as your caſe requires.

Michael-

Michaelmas *term in the ſeventh year of king* George *the third.*

Eſſex, *to wit.* D. *B.* putteth in his place *A. B.* his attorney, to proſecute a writ of covenant againſt *C. K.* and *L.* his wife of lands in *C.*

This warrant you file with the clerk of the warrants in *Clifford's Inn*, for which you pay 4*d.* and 4*d.* for every *Poſt terminum*; for the warrant of attorney muſt be of that term in which the writ of covenant was returnable.

By *ſtat.* 32 *Geo.* 2. *c.* 14. *ſect.* 1. On every writ of covenant which ſhall be ſued out for the paſſing of fines in the Common Pleas at *Weſtminſter*, the officer whoſe duty it is to ſet and indorſe the pre-fine payable thereon, ſhall at the ſame time ſet the uſual poſt-fine, and indorſe the ſame on the back of the ſaid writ, together with his name or mark of office, in like manner as the ſame are now indorſed at the king's ſilver office, which poſt-fine ſhall be forthwith paid to the receiver of pre-fines at the alienation office, with 4*d.* as his fee for receiving the ſame, inſtead of the fee of 4*d.* charged on lands and hereditaments, and payable to ſheriffs, bailiffs, and others, on diſcharging the ſame, by 3 *Geo.* 1. *cap.* 15. which fee of 4*d.* by the ſaid act granted, after the firſt day of *Trinity* term 1759, ſhall ceaſe; and ſuch receiver ſhall indorſe, upon the back of every ſuch writ

writ of covenant, one mark of office, as is now uſed by him on the receipt of pre-fines at the alienation office, with the name of ſuch receiver, and the ſum received as the poſt-fine, which mark of ſuch receiver ſhall diſcharge the manors, lands and hereditaments compriſed in the ſaid writ of covenant, and the cognizees named therein.

By *ſect.* 2. The officer or clerk of the king's ſilver office, or his deputy, ſhall continue to enter every fine upon record in the way hitherto uſed, and make the ſame entries, and put thereon the ſame indorſements with the ſame mark, and in like manner as has hitherto been the practice of the ſaid office in paſſing of fines; and no fine, until the ſame be marked with the ſum to which the poſt fine amounts in the king's ſilver office, ſhall be effectual in law.

By *ſect.* 3. Where no pre-fine is payable on any writ of covenant, (*viz. where the lands are under the yearly value of five marks*) the officer at the alienation office, whoſe duty it is to ſet the pre-fines, ſhall ſet on every writ of covenant brought to the ſaid alienation office, on which no pre-fine is payable, a poſt-fine of 6*s.* 8*d.* and ſhall indorſe ſuch poſt-fine of 6*s.* 8*d.* on every ſuch writ of covenant with his name and mark of office, as it hath been uſual; and every ſuch poſt-fine of 6*s.* 8*d.* ſhall be paid to the receiver of the alienation office, before the writ of covenant on which no pre-fine is payable, be paſſed at the alienation office; and the receiver, on payment of the ſaid 6*s.* 8*d.* ſhall indorſe

indorſe and mark every ſuch writ of covenant, as other writs of covenant are by this act directed to be indorſed.

By *ſect.* 4. The officer or clerk of the king's ſilver office, or his deputy, after the firſt day of *Trinity* term 1759, ſhall not receive any writ of covenant, unleſs it appear by the mark and indorſement of ſuch receiver, that the poſt-fine has been paid.

By *ſect.* 5. If after the payment of ſuch poſt-fine, the writ of covenant by the death of any of the parties, or other cauſe, be prevented from paſſing through the ſeveral other offices, ſo as the ſaid fine is not completed; then the ſaid receiver ſhall repay to the cognizees, or their attorney, on producing and filing with him the ſaid writ of covenant, every ſuch ſum as has been before by him received for the poſt fine; and ſuch writ of covenant ſo remaining filed with ſuch receiver ſhall be a diſcharge to ſuch receiver.

By *ſect.* 11. This act ſhall not alter the operation of any fine, which after the firſt day of *Trinity* term 1759 ſhall be levied in the Common Pleas at *Weſtminſter*, or the courſe of paſſing fines in that court, otherwiſe than by this act directed.

You then carry the writ of covenant to the office of the *Cuſtos Brevium*, in *Brick Court* in the *Temple*, to be entered, and three days after you fetch it away, carry then with you the concord and *Dedimus* (if any) to have the proclamations indorſed; you pay

pay here 3 *s.* 8 *d.* and 1 *s.* 8 *d.* for every *Post terminum*, if any.

Then annex to the writ of covenant the concord and *Dedimus* (if any), and leave them at the king's ſilver office in *Old Crown-Office Row* in the *Temple*; you pay here 1 *s.* 8 *d.* for the caption, and 4 *d.* for every other caption, if more than one, and fetch the writ, *&c.* from this office the third day after you left it.

Then you carry the writ, concord, *&c.* to the chirographer's office, to make the indentures; which you have in about a week's time.

WHEREAS by a rule of this court, made in the thirteenth year of the reign of his late majeſty king *George*, it was ordered, that no fine whatſoever taken and acknowledged before any commiſſioners, by virtue of a writ of *Dedimus poteſtatem* to them directed, be allowed to paſs, unleſs ſome perſon preſent when ſuch fine was taken and acknowledged did perſonally appear before the lord chief juſtice, or ſome other juſtice of this court, and was examined upon oath touching the due execution thereof, and particularly whether ſuch perſon knew the parties acknowledging ſuch fine; which rule has been found by experience to be attended with inconveniencies, and has not anſwered all the good purpoſes for which it was intended; for remedy thereof, and the better to aſcertain the practice for the future,

What affidavit neceſſary of the due execution of a fine.

It is ordered, that, inſtead of an oath made *viva voce* of the due acknowledgment of ſuch

ſuch fines, an affidavit or affidavits in writing on parchment ſhall be made and annexed to every fine ſo taken as aforeſaid, in which affidavit or affidavits the perſon or perſons making the ſame ſhall ſwear, that he or they knew the party or parties acknowledging ſuch fine; that the ſame was duly ſigned and acknowledged; that the party or parties acknowledging, and alſo the commiſſioners taking the ſame, were all of full age and competent underſtanding; that the femes covert (if any) were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſame, and that the conuſor or conuſors, and every of them, knew the ſame to be a fine to paſs his, her, or their eſtate or eſtates; which fine, together with ſuch affidavit or affidavits annexed, ſhall be tranſmitted to the ſaid lord chief juſtice, or ſome other juſtice of this court for his *Allocatur* thereon, and ſuch affidavit or affidavits ſhall remain annexed to ſuch fine, and be left with the ſame in the proper office. And it is ordered, that all and every ſuch affidavit and affidavits as aforeſaid, except where the perſon or perſons at the time of their acknowledging the fine are in *Ireland*, or ſome other parts beyond the ſeas, ſhall be made by ſome attorney or attornies of the courts at *Weſtminſter Hall*, or of the great ſeſſions in *Wales*, or of the county palatine of *Cheſter*, *Lancaſter* and *Durham*, and ſhall be ſworn before a perſon duly authoriſed to take affidavits in this court. *Hil.* 17 *Geo.* 2.

The

The form of an affidavit of the due caption of a fine.

In the Common Pleas.

A. B. of —— in the county of —— one of the attornies of his majeſty's court of —— and one of the commiſſioners named in the writ of *Dedimus poteſtatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and ſaith, that he knows *C. D.* and *E.* his wife, and *F. G* and *H.* his wife, the conuſors named in the ſaid fine, and that the ſame was duly ſigned and acknowledged by them before this deponent and *J. K.* gentleman, the other commiſſioner named in the ſaid writ; and that the ſaid *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and alſo this deponent and the ſaid *J. K.* were at the time of taking and acknowledging the ſaid fine all of full age and competent underſtanding. That the ſaid *E.* and *H.* we ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſaid fine, and that the ſaid conuſors, and every of them, knew the ſame to be a fine to paſs his, her, or their eſtate and eſtates.

A. B.

Sworn at —— in the county of —— the —— day of —— in the year of our Lord —— before me

L. M. one of, (&c.)

Or

Or thus, if the affidavit is not made by a commiſſioner.

In the Common Pleas.

A. B. of —— in the county of —— one of the attornies of the court of —— maketh oath and ſaith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conuſors named in the fine hereunto annexed, and that the ſaid fine was duly ſigned and acknowledged by them in this deponent's preſence, and that they the ſaid *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and alſo *J. K.* and *L. M.* gentlemen, the commiſſioners taking the ſame fine, were at the time of taking thereof all of full age, *&c.* as in the former.

If there be only one conuſor and his wife, ſay —— and each of them ——.

By a rule made *Trin.* 26 *&* 27 *Geo.* 2. reciting the laſt rule of *Hil.* 17 *Geo.* 2. and that the ſame had been found by experience to have anſwered many, but not all the good purpoſes for which it was intended: To make therefore the ſame more effectual and complete, and the better to aſcertain the practice for the future;

Further rule thereon.

It is ordered that in the affidavit, or affidavits, made in purſuance of ſuch rule, the perſon or perſons, ſo making the ſame, ſhall not only ſwear as they are directed by the ſaid rule, but alſo that the fine was duly

ſigned and acknowledged, upon the day and year, or days and years, mentioned in the caption; and if there be any razure or interlineation in the body or caption of ſuch fine, that ſuch razure or interlineation was made before the party or parties ſigned the ſaid fine, and before the caption was ſigned by the commiſſioners: Which affidavit, or affidavits, ſhall be annexed to the fine, and ſhall be tranſmitted to the ſaid lord chief juſtice, or ſome other juſtice of this court, for his *Allocatur* thereon, and ſhall remain annexed to ſuch fine, and be left with the ſame in the proper office, as is directed by the ſaid rule.

An addition to be made to the former affidavit.

AND this deponent further ſaith, that the ſaid fine was duly ſigned and acknowledged, upon the day and year mentioned in the caption, (or upon the ſeveral days and year, or years, reſpectively mentioned in the captions, if there happens to be more captions than one;) and that the razure or interlineation (razures, or interlineations) in the body (or in the caption, or captions) of ſuch fine *(as the caſe ſhall happen)* was (or were) made before the party (or parties) ſigned the ſaid fine, and before the caption (or captions) was (or were) ſigned by the commiſſioners.

A fine

A fine was taken before *Prentice* an attorney, and *Prentice* a tradeſman as commiſſioners; *Prentice* the attorney died without having made an affidavit of the acknowledgment of the fine. One of the cognizors became bankrupt, abſconded, and did not ſurrender within the time limited by the ſtatute. Ordered that the fine ſhould paſs on affidavit of the due acknowledgment thereof by *Prentice* the tradeſman. *Trin.* 27, 28 *Geo.* 2. *Barnes* 217. *Say* againſt *Smith* and others.

Fine paſſed on affidavit by a tradeſman.

Writ of covenant teſted firſt day of *Eaſter* term, *viz.* 1 *May* 1754.

Fine taken by *De. po.* 13 *May.*

Writ of covenant returnable 19 *May.*

Compounded and pre-fine paid between 17 & 20 *May.*

Mary Nunn one of the cognizors died 27 *May.*

Death of one of the cognizors before king's ſilver entered, but no Caveat till after.

After paſſing the return, warrant of attorney and *Cuſtos brevium* offices, the writ was brought to the king's ſilver office on 11 *June*, and the clerk there then entered the king's ſilver or poſt-fine in his book, and on the writ of covenant.

A *Caveat* to prevent the completing this fine was brought to the king's ſilver office on 13 *June* (before the record was made up in form).

The court utterly exploded the notion, which had prevailed, undoubtedly by miſtake, that the king's ſilver is the pre-fine or fine for licence to alienate; certainly it is not; the king's ſilver is the poſt-fine or fine

for licence to accord. 2 *Inſt.* 411. *Dyer* 246. The return of the writ of covenant is agreed to be in the life-time of *Mary* the cogniſor; and from that time the crown has a right to the poſt-fine, which was entered at the king's ſilver office before any *Caveat* againſt it; the making up the record in form is certainly a miniſterial act, not neceſſary to be done previous to the *Caveat*; the entry by the clerk of the king's ſilver as aforeſaid is ſufficient. (2 *Ro. Ab.* 19. *Q. p.* 1. *in point.*) *Paſ.* 28 *Geo.* 2. *Barber* plaintiff againſt *Henry Nunn* and *Mary* his wife and others deforcients. *Barnes* 218.

Fine taken beyond ſea not ſigned by the parties, ordered to paſs.

A fine taken at *Naples* ordered to paſs, though not ſigned by the parties, on affidavit that it was duly acknowledged; that the parties were of full age and good underſtanding; that the feme covert was examined apart from her huſband and freely conſented. The fine being taken beyond ſea is not within the late rule requiring an affidavit, and the ſigning a fine by the cogniſors is not an eſſential part. By *Willes*, ch. juſt. and *Clive* juſt. 27 *February* 1756. *Fleetwood* plaintiff, *Calender* and wife and others deforcients. *Barnes* 219, 220.

A fine amended in the name of a pariſh, which was levied in the reign of queen *Anne*. 3 *Wilſ. Rep.* 58.

Fine amended by deed of uſes, adding a *vill*. *Barnes* 24.

Proceedings to perfect a fine ſtayed, and former proceedings vacated, wife of one of the cognizors, dying before return of writ of

of covenant, on motion, without putting parties to bring writ of error; the concord is to be made at return of writ of covenant, if party die before that day, there can be no agreement, all is void. *Barnes* 220, 221.

A fine from three conuſors and the wives of two of them, to two conuſees, upon two writs of covenant. 1. *Of meſſuages, cottages, barns, ſtables, gardens, orchards, land, meadow, paſture, wood, common of paſture, and free fiſhery.* 2. *Of meſſuages, cottages, barns, ſtables, gardens, orchards, land, meadow, paſture, wood, furze and heath.*

Norfolk, *to wit*, COmmand *A. B.* gent. and *C.* his wife, *D. E.* gent. and *F.* his wife, and *G. H.* gent. that they juſtly, *&c.* perform to *J. K.* eſq; and *L. M.* gent. the covenant made between them of four meſſuages, ſix cottages, four barns, ſix ſtables, ſix gardens, ſix orchards, four hundred acres of land, four hundred acres of meadow, four hundred acres of paſture, forty acres of wood, common of paſture for all cattle, and free fiſhery with the appurtenances in *N. O.* and *P.* And unleſs, *&c.*

Suffolk, *to wit*, *Command* the ſame that they juſtly, *&c.* perform to the ſame the covenant made between them of ſix meſſuages, four cottages, five barns, ſix ſtables, ſix gardens, ſix orchards, four hundred acres of land, two hundred acres of meadow, two

hundred acres of paſture, thirty acres of wood, and forty acres of furze and heath, with the appurtenances in *Q. R. &c.* and unleſs, *&c.*

And the agreement is ſuch, *to wit*, that the aforeſaid *A.* and *C. D.* and *F.* and *G.* have acknowledged the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances to be the right of the ſaid *J.* as thoſe which the ſaid *J.* and *L.* have of the gift of the ſaid *A.* and *C. D.* and *F.* and *G.* and thoſe they have remiſed and quit-claimed from themſelves the ſaid *A.* and *C. D.* and *F.* and *G.* and their heirs, to the ſaid *J.* and *L.* and the heirs of the ſaid *J.* for ever. *And moreover*, the ſaid *A.* and *C.* have granted for themſelves and the heirs of the ſaid *C.* that they will warrant to the ſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances, againſt them the ſaid *A.* and *C.* and the heirs of the ſaid *C.* for ever. *And further* the ſaid *D.* and *F.* have granted for themſelves and the heirs of the ſaid *F.* that they will warrant to the aforeſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances againſt them the ſaid *D.* and *F.* and the heirs of the ſaid *F.* for ever. *And alſo* the ſaid *G.* hath granted for himſelf and his heirs, that he will warrant to the aforeſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appur-

appurtenances againſt him the ſaid *G.* and his heirs for ever, and for this, *&c.*

Taken and acknowledged, *&c.* { *A. B.* / *C. B.* / *D. E.* / *F. E.* / *G. H.*

BILL of Disbursements and Fees on Fine passed by De. Po.

Trinity Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Perusing writings, attending for that purpose, and to settle parcels for fine	0	0	0	0	3	4	0	6	8
Precipe for *De. Po.* and copy for cursitor	0	0	0	0	1	6	0	3	0
De. Po. and fee	1	6	8	1	10	0	1	13	4
Precipe and concord with fair copy, fo. 4	0	0	0	0	2	8	0	5	4
Engrossing and parchment	0	0	5	0	1	9	0	3	1
Affidavit of caption, parchment duty, engrossing, and oath	0	3	9	0	5	3	0	6	9
Allowance	0	4	0	0	4	0	0	4	0
Attending judge for same	0	0	0	0	1	8	0	3	4
Writ of covenant and fee	0	7	6	0	10	10	0	14	2
Private seal	0	8	6	0	8	6	0	8	6
King's fine	4	13	4	4	13	4	4	13	4
Attending to compound	0	0	0	0	3	4	0	6	8
Alienation fees	0	4	0	0	4	0	0	4	0
Pre-fine and post-fine	7	0	0	7	0	0	7	0	0
Letters, &c.	0	0	0	0	1	0	0	2	0

Michaelmas Term following.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Returning and inrolling covenant	0	1	6	0	1	9	0	2	0
Warrant of attorney, and filing	0	0	4	0	0	10	0	1	4
Keeper of writs	0	3	8	0	3	8	0	3	8
King's ſilver	0	2	8	0	2	8	0	2	8
Chirographer	0	6	2	0	6	2	0	6	2
Indentures	0	6	6	0	6	6	0	6	6
Paſſing fine	0	0	0	0	6	8	0	13	4
Letters, &c.	0	0	0	0	1	0	0	2	0

Bill of Diſburſements and Fees on Fine paſſed at Bar, conſiſts of the ſame Items as the laſt, except as hereunder expreſt.

Precipe for covenant, and copy for curſitor	0	0	0	0	1	3	0	2	6
Serjeants for counting fine at bar	0	2	0	0	2	8	0	3	4
Attending court	0	0	0	0	3	4	0	6	8
Paid ſecondary and cryer	0	2	6	0	2	6	0	2	6
Paid king's fine	1	0	0	1	0	0	1	0	0

N. B. The reſt of this bill ſame as laſt.

Reco-

Recoveries.

Where the parties appear in proper perſon.

OF ſuffering a recovery where the tenant and vouchees appear in perſon.

You prepare a *Præcipe* on paper, according to the nature of your caſe, in this manner:

Cooke.

Eaſter *term in the ſeventh year of the reign of king* George *the third.*

Eſſex, *to wit.* COmmand *R. R.* gentleman, that he juſtly, *&c.* render to *S. R.* three meſſuages, and twenty-four acres of land (*ſpecifying the parcels*) with the appurtenances in *D.* which he claimeth, *&c.*

Tenant in perſon voucheth to warrant *S. F.* who in perſon voucheth to warrant *Edmund Wilſon.*

If there be more vouchees, name them in order, naming *Edmund Wilſon*, who is the common vouchee, laſt.

Then you go with the tenant and vouchee or vouchees (except the common vouchee) to *Weſtminſter*, and give the *Præcipe* to a ſerjeant's clerk, who will get it paſſed at bar, and deliver it back to you.

If

If the recovery be with ſingle voucher, you pay the ſerjeant's clerk 6*s.* with double voucher 8*s.* with treble voucher 10*s.* with quadruple voucher 12*s.* and if by warrant of attorney 4*s.* more. There are other fees in court amounting to about 5*s.* more, if by warrant of attorney, to 6*s.* but you may give thoſe fees to the ſerjeant's clerk who will pay them for you.

You then make a copy of the *Præcipe* for the curſitor to make out the writ of entry in the following form.

Eſſex, *to wit*, Command *R. R.* gentleman, that he juſtly, *&c.* render to *S. R.* three meſſuages and twenty-four acres of land, with the appurtenances in *D.* which he claimeth, *&c.*

Returnable from Eaſter *day in* 15 *days.*

You pay for the writ of entry 7*s.* 6*d.* and then get the attorney general's hand to it, for which you pay 10*s.* (this is frequently done laſt of all); you then go to the alienation office in the *Temple*, and compound for the fine, which for ſuch ſmall parcels as above is generally 6*s.* 8*d.* which you pay with the clerk's fee, generally about 2*s.* or 2*s.* 6*d.*

You then make out a writ of ſeiſin, for the form of which *vide poſtea*, and having got it ſigned by the prothonotary and ſealed, you carry that and the writ of entry to the return office, N°. 3 in the Inner *Temple*, to be

be returned; for the return of each you pay 1 *s.* 6 *d.*

You then prepare a draught of your recovery in the form after mentioned, and getting a roll from the prothonotary's office enter it thereon in an ingroſſing hand.

Then the exemplification is to be ingroſſed in an exemplifying hand in the form hereafter mentioned, on a ſkin of parchment, with a double five ſhillings ſtamp. Then go to the prothonotary's office, taking with you the roll, exemplification, writs, and *Præcipe* paſſed at bar, docket the roll, enter the *Præcipe* on the remembrance roll, according to the form you'll ſee there, and one of the prothonotary's clerks will examine the writs, entries and exemplification; you pay him the fees, which are different according to the nature of the caſe; he then ſigns the exemplification, which you then get ſealed.

The form of the recovery as entered on the roll.

Entry returnable from Eaſter *day in* 15 *days.*

Eſſex, *to wit,* S. *R.* gentleman, in his proper perſon demandeth againſt *R. R.* gentleman, three meſſuages and twenty-four acres of land with the appurtenances in *D.* as his right and inheritance, and into which the ſame *R.* hath not entry but after the diſſeiſin which *Hugh Hunt* thereof unjuſtly, and without judgment hath made to the ſaid *S.* within thirty years, *&c.* And whereupon he

he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the aforeſaid *R.* in his proper perſon cometh and defendeth his right, when, *&c.* and thereupon voucheth to warrant *S. F.* who is preſent here in court in her proper perſon, and freely warranteth the tenements aforeſaid, with the appurtenances, to the ſaid *R*, *&c.* and hereupon the ſaid *S.* demandeth againſt the ſaid *S.* tenant by her own warranty the tenements aforeſaid, with the appurtenances in manner aforeſaid, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *S.* tenant by her own warranty defendeth her right, when, *&c.* and thereupon ſhe further voucheth to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to her the tenements aforeſaid with the appurtenances, *&c.* and hereupon the ſaid *S.* demandeth againſt him the ſaid *Edmund* tenant by his own warranty the tenements aforeſaid, with the appurtenances in manner aforeſaid, *&c.* and whereupon he ſaith, that

he

he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *Edmund*, tenant by his own warranty defendeth his right, when, *&c.* and ſaith, that the ſaid *Hugh* did not diſſeiſe the ſaid *S.* of the tenements aforeſaid with the appurtenances, as the ſaid *S.* by his writ and declaration above doth ſuppoſe; and of this he putteth himſelf upon the country, *&c.*

And the ſaid *S.* thereupon craveth leave to imparle, and he hath it, *&c.* and afterwards the ſaid *S.* cometh again here into court in this ſame term in his proper perſon, and the ſaid *Edmund* although ſolemnly called cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered, that the ſaid *S.* recover his ſeiſin againſt the ſaid *R.* of the tenements aforeſaid with the appurtenances, and that the ſaid *R.* have of the land of the ſaid *S.* to the value, *&c.* and furthermore that the ſaid *S.* have the land of the ſaid *Edmund* to the value, *&c.* and the ſaid *Edmund* in mercy, *&c.* and hereupon the ſaid *S.* prayeth a writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements aforeſaid with the appurtenances to be delivered to him, and is granted to him returnable here on the morrow

row of the Aſcenſion of our Lord; at which day the ſaid *S.* cometh here into court in his proper perſon, and the ſheriff namely *E. E.* eſq; now returneth, that he by virtue of the aforeſaid writ to him directed on the twenty-ſecond day of *May* in this ſame term did cauſe full ſeiſin of the tenements aforeſaid with the appurtenances, to be delivered to the aforeſaid *S.* as by the ſaid writ he was commanded, *&c.*

Exemplification of the above recovery.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To all to whom theſe our preſent letters ſhall come, greeting. Know ye that amongſt the pleas of land inrolled at *Weſtminſter*, before Sir *John Eardley Wilmot*, knight, and his brethren our juſtices of the bench of the term of *Eaſter* in the ſeventh year of our reign, upon the ſeventh roll it is thus contained: Entry returnable [*the whole of the above entry to the words*] Commanded, *&c.* All and ſingular which premiſſes at the requeſt of the ſaid *S.* by the tenor of theſe preſents we have commanded to be exemplified; in teſtimony whereof, we have cauſed our ſeal appointed for ſealing of writs in the bench aforeſaid to be affixed to theſe preſents. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the twenty-firſt day of *May* in the ſeventh year of our reign.

Cooke.

To

Of recoveries where ſome of the parties appear by attorney.

To prevent the expence and delay of a *Dedimus* for the tenant, when he lives at diſtance from *Weſtminſter*, generally ſome perſon in *London* is made tenant to the *Præcipe*; therefore there being ſeldom a *Dedimus* for the tenant, and this being intended as a ſhort treatiſe of the moſt uſual matters in recoveries, and not of all its branches, I ſhall proceed to recoveries where the vouchee appears by attorney.

Prepare a *Præcipe* for the curſitor to make out the *Dedimus poteſtatem*, according to the nature of your caſe, in the following form:

Shropſhire, *to wit*, Command *A. B.* gentleman, that he juſtly, *&c.* render to *R. R.* gentleman, twenty meſſuages, ten gardens, two hundred acres of land, one hundred acres of meadow, one hundred acres of paſture, fifty acres of wood, fifty acres of furze and heath, common of paſture for all manner of cattle, fairs, markets, tolls, ſtallage and pickage, with the appurtenances in *B. L. B. C.* and *L.* which he claimeth, *&c.*

The tenant in perſon voucheth to warrant *R. W.* eſq; and *W. W.* gent. (whereupon ſummons returnable from the day of St. *Martin* in fifteen days) who by attorney voucheth to warrant *Edmund Wilſon.*

De. po. to ——— Sir *J. B.* knt. *G. M.* *T. M.* } gent.

You pay the curſitor for this writ 1 5 8

The

The warrant of attorney is to be ingroſſed on parchment thus:

Shropſhire, *to wit*, *R. W.* eſquire, and *W. W.* gentleman, whom *A. B.* gentleman, hath vouched to warrant, put in their place *J. S.* and *E. C.* their attornies, jointly and ſeverally againſt *R. R.* gentleman, of a plea of land, *&c.*

Taken and acknowledged the day of in the ſeventh year of the reign of king *George* the third, before.

The vouchees are to ſign and acknowledge the warrant of attorney, in the preſence of any two of the commiſſioners who are to ſign the caption, and alſo an indorſement on the back of the *Dedimus* in theſe words, *viz.*

The execution of this commiſſion appeareth in a certain ſchedule to this commiſſion annexed.

Hilary Term, *in the fourteenth year of the reign of king* George *the third.*

In the common pleas.

FOR the more effectual and certain proof of the due acknowledgment of warrants of attorney, taken from the tenants or vouchees in common recoveries, by virtue of any writ of *Dedimus Poteſtatem*, It is ordered by the court, That from and after

the firſt day of *Michaelmas* term next, no common recovery, wherein the tenant or tenants, vouchee or vouchees, or any of them, ſhall appear and defend by attorney, ſhall be arraigned at the bar, unleſs an affidavit or affidavits in writing on parchment ſhall be made and annexed to a copy of the precipe and warrant or warrants of attorney, acknowledged by ſuch tenant or tenants, vouchee or vouchees, by virtue of any writ or writs of *Dedimus Poteſtatem*; in which affidavit or affidavits the perſon or perſons making the ſame ſhall ſwear, That he or they knew the party or parties acknowledging ſuch warrant or warrants of attorney; that the ſame was or were duly ſigned and acknowledged, upon the day and year or ſeveral days and years mentioned in the caption or ſeveral captions thereof; that the party or parties acknowledging, and alſo the commiſſioners taking the ſame, were all of full age and competent underſtanding; that the femes covert (if any) were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſame; that all the ſaid parties knew the ſame warrant or warrants of attorney was or were intended for ſuffering a common recovery to paſs his, her, or their eſtate or eſtates. And further, that the razure or razures, interlineation or interlineations, (if any) in the body or caption of ſuch original warrant or warrants of attorney was or were made before the ſaid parties or any of them ſigned the ſaid warrant or warrants,

and

and before the commiſſioners ſigned the ſaid caption or captions, which affidavit or affidavits (together with the ſaid copy of the precipe and warrant or warrants of attorney, whereunto the ſame ſhall be annexed) ſhall be filed in the office of inrolment of writs for fines and recoveries. And it is ordered, That all and every ſuch affidavit or affidavits, as aforeſaid, ſhall be made by ſome attorney or attornies, of the courts of *Weſtminſter-Hall*, or of the great ſeſſions in *Wales*, or of the counties palatine of *Cheſter*, *Lancaſter* or *Durham*, and ſhall be ſworn before a perſon duly authorized to take affidavits in this court, except where the party or parties reſpectively, at the time of their acknowledging ſuch warrant or warrants of attorney, ſhall be in that part of *Great-Britain* called *Scotland*, or in *Ireland*, or in ſome other parts beyond the ſeas: and in caſe the ſaid party or parties ſhall be in *Scotland*, then the ſaid affidavit or affidavits ſhall be made by one of the clerks of his majeſty's ſignet, and ſworn before one of the judges or other perſon duly authorized to take affidavits or depoſitions in the court of ſeſſion or court of exchequer in that part of the united kingdom: But if the ſaid party or parties ſhall be in *Ireland*, or in any other parts beyond the ſeas, then the ſaid affidavit or affidavits ſhall be made by one of the commiſſioners who hath taken the acknowledgment of ſuch warrant or warrants of attorney, and ſhall be ſworn either before ſome perſon duly authorized to take

affidavits in this court, or before ſome magiſtrate of the place where ſuch acknowledgement ſhall be taken, having authority to adminiſter an oath, and in the preſence of a public notary, which notary ſhall alſo certify in writing under his hand and ſeal, as well the due adminiſtring of the ſaid oath, as alſo the name, ſignature, and office of the magiſtrate adminiſtring the ſame.

By the COURT.

The FORM of the AFFIDAVIT.

In the Common Pleas.

A. B. *of* *in the county of* *gentleman, one of the attornies of his majeſty's court of* *and one of the commiſſioners named in the writ of* Dedimus Poteſtatem, *for receiving the attorney or attornies of* C. D. *and* E. *his wife* (&c.) *maketh oath, and ſaith, That he knows the ſaid* C. D. *and* E. *his wife* (&c.) *and that they, and each* (*or every*) *of them, did duly ſign and acknowledge, in the preſence of this deponent, and of* F. G. *another commiſſioner named in the ſaid writ, the warrant* (*or warrants*) *of attorney, a copy whereof is hereunto annexed, on the day and year* (*or ſeveral days and years*) *mentioned in the caption* (*or ſeveral captions*) *thereof. And that the ſaid* C. D. *and* E. *his wife* (&c.) *and alſo this deponent, and the ſaid* F. G. *were, at the time of acknowledging and taking the ſaid warrant* (*or warrants*)

warrants) of attorney, all of full age and competent understanding. And that the said E. *was solely and separately examined apart from her said husband, and freely and voluntarily consented to and acknowledged her warrant of attorney aforesaid. And that the said* C. D. *and* E. *his wife (&c.) respectively knew that the said warrant (or warrants) of attorney was (or were) intended for the suffering of a common recovery to pass his, her, or their estate or estates.* " *And this deponent further saith, That the razure (or razures) interlineation (or interlineations) appearing in the said original warrant (or warrants) of attorney, was (or were) made before any of the parties signed the said warrant (or warrants;) and the razure or razures) interlineation (or interlineations) appearing in the said original caption (or captions) was (or were) made before the said commissioners signed the same.*

To be added in part or in the whole, if any razure, &c. in the warrant or caption, as the case may require.

Or thus, if the affidavit is not made by a commissioner.

In the Common Pleas.

A. B. *of in the county of gentleman, one of the attornies of his majesty's court of maketh oath, and saith, That he knows* C. D. *and* E. *his wife (&c.) and that they, and each (or every) of them, did duly sign and acknowledge, in the presence of this deponent, the warrant (or warrants) of attorney, a copy whereof is hereunto annexed, on the day and year (or several*

days and years) mentioned in the caption (or ſeveral captions) thereof; and that they the ſaid C. D. *and* E. *his wife (&c.) and* F. G. *and* J. K. *gentlemen, the commiſſioners taking the ſaid acknowledgment (or acknowledgments) were, at the time of acknowledging and taking the ſaid warrant (or warrants) of attorney, all of full age, &c. as in the former affidavit.*

When the *Dedimus* is returned, you carry it to the curſitor, who will make out a *Mittimus* and tranſcript, and alſo the writ of entry.

In the mean time you make out the writs of ſummons and ſeiſin in the manner herein after directed, which are to be ſigned by the prothonotary, and then ſealed.

You alſo get the recovery paſſed at bar (which may regularly be done any day after the return of the writ of ſummons, as to which *videa poſtea)* and for that purpoſe you write the *Praecipe* on paper in the ſame manner as before directed for the *Dedimus*, only adding the term, and prothonotary's name at the top; you attend with the tenant at *Weſtminſter*, and deliver the *Praecipe* to a ſerjeant's clerk, who will get it paſſed for you, as before is mentioned.

You get the writ of entry ſigned by the attorney general, (though that is often done laſt of all,) compound for the fine at the alienation office, and get the writs of entry, ſummons and ſeiſin, returned in manner before directed.

You

You then prepare your entries, which in this caſe are two, the forms of which follow; the firſt of which is called the ſummons roll, and is to be wrote in an ingroſſing; the ſecond, called the recovery roll, begins with the *Mittimus*, and tranſcript, which is to be wrote in a ſmaller hand, and the reſt of that roll in an ingroſſing hand; theſe rolls you have from the prothonotary.

You then prepare and ingroſs the exemplification, the form of which you will find among the following precedents; and then paſs the whole at the prothonotary's office, in manner before directed.

The firſt, or ſummons roll.

Shropſhire, *to wit.* R. *R.* gentleman, in his proper perſon, demandeth againſt *A. B.* gentleman, twenty meſſuages [*the parcels as before*] with the appurtenances in *B. L. B. C.* and *L.* as his right and inheritance, and into which the ſame *A.* hath not entry, but after the diſſeiſin, which *Hugh Hunt* thereof unjuſtly, and without judgment, hath made to the ſaid *R.* within thirty years, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, *&c.* And

To be wrote in an ingroſſing hand.

into which, *&c.* And thereof he bringeth ſuit, *&c.*

And the ſaid *A.* in his proper perſon, cometh and defendeth his right when, *&c.* And thereupon voucheth to warrant *R. W.* eſquire, and *W. W.* gentleman, ſummoned in the county aforeſaid, and let him have them here, from the day of Saint *Martin* in fifteen days, by the aid of the court, *&c.* The ſame day is given here to the parties aforeſaid, *&c.* And upon this the ſaid *A.* putteth in his place *J. W.* and *T. B.* his attorney, jointly and ſeverally, againſt the ſaid *R. R.* to gain or loſe in the plea aforeſaid, *&c.*

The ſecond roll.

To be wrote in a ſmaller hand.

OUR lord the king ſent to his juſtices of the bench here this writ of *Mittimus* cloſed, together with the tenor of a certain writ of our ſaid lord the king of *Dedimus poteſtatem*, for the receiving a warrant of attorney, and the return of the ſame; and alſo the warrant of attorney thereupon received, in theſe words:

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To his juſtices of the bench, greeting. We ſend you, incloſed in theſe preſents, the tenors of our certain writ of *Dedimus poteſtatem*, directed to our truſty and well-beloved Sir *J. B.*

J. B. knight, and to our beloved *G. M.* and *T. M.* gentlemen, for and concerning the receiving the attorney or attornies, jointly or ſeverally, whom or who *R. W.* eſquire, and *W. W.* gentleman, will appoint or conſtitute in their ſtead, before the aforeſaid Sir *J. G.* and *T.* or two of them, againſt *R. R.* gentleman, to gain or loſe in a plea of land upon our writ of entry upon diſſeiſin *in le poſt*, depending before you, between the aforeſaid *R. R.* and *A. B.* gentlemen, concerning twenty meſſuages, *&c.* [*naming all the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* in *Shropſhire*; which ſame *A.* hath vouched the ſame *R. W.* and *W.* to warrant to him the meſſuages aforeſaid, and other the premiſſes with the appurtenances; alſo the return of the ſame writ of *Dedimus poteſtatem*; and likewiſe a warrant of attorney received in that behalf ſent into our *Chancery*, and remaining on the files of the ſame *Chancery*, commanding you, that, inſpecting the ſaid tenors, you cauſe farther to be done therein at the proſecution of the ſaid *R. R.* what of right, and according to the law and cuſtom of *England*, ſhall be meet to be done. Witneſs ourſelf at *Weſtminſter* the twenty-firſt day of *November* in the ſeventh year of our reign. *Sykes.* *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To his truſty and well-beloved Sir *J. B.* knight, and to his beloved *G. M.* and *T. M.* gentlemen, greeting. Whereas our writ of entry upon diſſeiſin

ſeiſin *in le poſt* is depending before our juſtices of the bench, between *R. R.* gentleman, and *A. B.* gentleman, concerning twenty meſſuages, &c. [*all the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* in *Shropſhire*; and the ſaid *A.* appearing in our full court before our juſtices aforeſaid, hath vouched *R. W.* eſquire, and *W. W.* gentleman, to warrant to him the meſſuages aforeſaid, and other the premiſſes, with the appurtenances: Whereupon our writ of ſummons to warrant hath iſſued forth againſt the ſaid *R. W.* and *W.* returnable before our juſtices aforeſaid, from the day of Saint *Martin* in fifteen days. And foraſmuch as the ſaid *R. W.* and *W.* are ſo infirm, that they cannot, without the greateſt bodily danger, travel to *Weſtminſter* at the day in our ſaid writ of ſummons to warrant contained, to do and act thoſe things which then and there ſhall be expedient to be done in the ſame, as we are informed; we, tendering the condition of the ſaid *R. W.* and *W.* in this behalf, have given to you, or two of you, power and authority to receive the attorney or attornies jointly or ſeverally, whom or who the ſaid *R. W.* and *W.* before you, or two of you, will appoint or conſtitute in their ſtead, to gain or loſe in the ſaid plea before our ſaid juſtices: And therefore we command you, or two of you, that you go in perſon unto the ſaid *R. W.* and *W.* if they cannot conveniently travel to you, and receive their attorney or attornies, jointly or ſeverally, in form aforeſaid; and when you

ſhall

ſhall have received the ſaid attorney or attornies, you diſtinctly and plainly, without delay, certify us in our *Chancery* under your ſeals, or the ſeals of two of you, of the name or names of ſuch attorney or attornies, ſending back unto us this writ. Witneſs ourſelf at *Weſtminſter*, the fourth day of *November* in the ſeventh year of our reign. *Sykes.* By the lord chancellor of *Great Britain*, at the inſtance of the demandant *H.* C. J. *Wilmot.* The execution of this commiſſion appears in a certain ſchedule to this commiſſion annexed. *G. M. T. M.* Received 6*s.* 8*d. R. Salkeld.* Shropſhire, *to wit*, *R. W.* eſquire, and *W. W.* gentleman, whom *A. B.* gentleman, vouched to warrant, put in their place *J. Sharpe* and *E. C.* their attornies, jointly and ſeverally againſt *R. R.* gentleman, of a plea of land, *&c. R. W. W. W.* Taken and acknowledged the 18th day of *November* in the ſeventh year of the reign of king *George* the third, before *G. M. T. M.*

Elſewhere, as it appeareth of this ſame term upon the 421ſt roll, it is thus contained: Shropſhire, *to wit*, *R. R.* gentleman, in his proper perſon, demandeth againſt *A. B.* gentleman, twenty meſſuages, *&c.* [*naming the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* as his right and inheritance; and into which the ſame *A.* hath not entry, but after the diſſeiſin which *Hugh Hunt* thereof unjuſtly, and without judgment, hath made to the ſaid *R.* within thirty years, *&c.* And whereupon he ſaith, that he *Ingroſſing hand.*

he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *A.* in his proper perſon, cometh and defendeth his right when, *&c.* and thereupon voucheth to warrant *R. W.* eſquire, and *W. W.* gentleman, ſummoned in the county aforeſaid; let him have them here from the day of Saint *Martin* in fifteen days, by the aid of the court, *&c.* The ſame day is given here to the parties aforeſaid, *&c.* And upon this the ſaid *A.* putteth in his place *J. W.* and *T. B.* his attornies jointly and ſeverally, againſt the ſaid *R. R.* to gain or loſe in the plea aforeſaid, *&c.* At which day here cometh as well the ſaid *R. R.* in his proper perſon, as the ſaid *A. by the ſaid J. W.* his attorney. And the ſaid *R. W.* and *W.* being ſummoned, *&c.* likewiſe come by *J. S.* their attorney, and freely warrant the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, to the ſaid *A. &c.* And hereupon the ſaid *R. R.* demandeth againſt the ſaid *R. W.* and *W.* tenants by their own warranty, the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in manner aforeſaid, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets,

kets, toll, ſtallage and pickage aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *R. W.* and *W.* tenants by their own warranty defend their right when, *&c.* and thereupon they further vouch to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to them the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, *&c.* And hereupon the ſaid *R. R.* demandeth againſt him the ſaid *Edmund*, tenant by his own warranty, the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in manner aforeſaid, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *Edmund* tenant by his own warranty defendeth his right when, *&c.* and ſaith, that the ſaid *H.* did not diſſeiſe the ſaid *R. R.* of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, as the ſaid *R. R.* by

his writ and declaration above doth ſuppoſe: And of this he putteth himſelf upon the country, *&c.*

And the ſaid *R. R.* thereupon craveth leave to imparle, and he hath it, *&c.* And afterwards the ſaid *R. R.* cometh again here into court in this ſame term, in his proper perſon; and the ſaid *Edmund* although ſolemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered, that the ſaid *R. R.* recover his ſeiſin againſt the ſaid *A.* of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances; and that the ſaid *A.* have of the land of the aforeſaid *R. W.* and *W.* to the value, *&c.* And furthermore, that the ſaid *R. W.* and *W.* have of the land of the ſaid *E.* to the value, *&c.* And the ſaid *Edmund* in mercy, *&c.* And hereupon the ſaid *R. R.* prayeth a writ of our lord the king, to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, to be delivered to him; and it is granted to him returnable here in eight days of Saint *Hilary:* At which day the ſaid *R. R.* cometh here into court in his proper perſon; and the ſheriff, namely Sir *R. A.* baronet, now returneth, that he, by virtue of the aforeſaid writ to him directed on the ſixth day of *December* laſt, did cauſe full ſeiſin of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid,

aforeſaid, with the appurtenances, to be delivered to the aforeſaid *R. R.* as by the ſaid writ he was commanded, *&c.*

A common recovery was amended by inſerting the word *Marſham* (being the name of a pariſh) among the pariſhes mentioned in the recovery, upon an affidavit made by the vouchee, that ſome part of the lands, whereof the recovery was intended to be ſuffered, extended into and lay in the pariſh of *Marſham* in *Kent*, and that the ſame was intended to be comprized in and paſſed by the indenture of bargain and ſale, and the recovery, altho' the ſaid pariſh of *Marſham* was not mentioned either in the recovery, or ſaid deed to lend the uſes thereof. 3 *Wilſ. Rep.* 154.

The exemplification of a recovery, where the tenant appears in perſon, and the vouchee on ſummons.

GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c. *To all to whom theſe our preſent letters ſhall come, greeting. Know ye that amongſt the pleas of land inrolled at* Weſtminſter, *before Sir*——— *knight, and his brethren, our juſtices of the bench of the term of* Eaſter *in the* ſixth *year of our reign, upon the* forty-ſecond *roll, it is thus contained*; Elſewhere as it appears in the term of Saint *Hilary* laſt paſt, upon the *three hundredth and third* roll, it is thus contained *:

The recovery as entered on the roll, the exemplification being without paragraphs.

Somerſetſhire, *ſſ. A. B. (the demandant)* in his proper perſon demandeth againſt *C. D. (the tenant)* one meſſuage [*reciting the parcels*] with the appurtenances in *D.* as his right and inheritance, and into which the ſame *C.* hath not entry but after the *Diſſeiſin*, which *Hugh Hunt* thereof unjuſtly and without judgment hath made to the ſaid *A.* within thirty years, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time

* When vouchee appears at bar, inſert the return of the writ of entry, thus: "Entry returnable in 15 days of Saint *Martin*."

of

of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth ſuit, &c.

And the ſaid *C.* in his proper perſon cometh and defendeth his right when, &c. and thereupon voucheth to * warrant *W. W.* and *M.* his wife, ſummoned in the county aforeſaid; let him have them here *from* Eaſter-*day in five weeks*, by the aid of the court, &c. the ſame day is given here to the parties aforeſaid, &c. And upon this the ſaid *C.* putteth in his place *G. H.* and *J. K.* his attornies jointly and ſeverally, againſt the ſaid *A.* to gain or loſe of the plea aforeſaid, &c. at which day here cometh, as well the ſaid *A.* in his proper perſon, as the ſaid *C.* by the ſaid *G. H.* his attorney, and the ſaid *W.* and *M.* being ſummoned, &c. likewiſe come by *T. T.* their attorney, and freely warrant the tenement aforeſaid, with the appurtenances to the ſaid *C.* &c. And hereupon the ſaid *A.* demandeth againſt the aforeſaid *W.* and *M.* tenants by their own warranty, the tenements aforeſaid, with the appurtenances, in manner aforeſaid, &c. and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth ſuit, &c.

And the ſaid *W.* and *M.* tenants by their own warranty, defend their right when, &c.

* *If there be no ſummons, then ſay,* voucheth to warranty *W. W.* (*the vouchee*) who is preſent here in court in his proper perſon, and freely warranteth the tenements aforeſaid, with the appurtenances, to the ſaid *C.* &c. and hereupon the ſaid *A.*—

and thereupon they further vouch to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to them the tenements aforeſaid, with the appurtenances, *&c.* And hereupon the ſaid *A.* demandeth againſt him the ſaid *Edmund*, tenant by his own warranty, the tenements aforeſaid, with the appurtenances, in manner aforeſaid, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *Edmund* tenant by his own warranty defendeth his right, when, *&c.* and ſaith, that the ſaid *Hugh* did not diſſeiſe the ſaid *A.* of the tenements aforeſaid, with the appurtenances, as the ſaid *A.* by his writ and declaration above doth ſuppoſe; and of this he putteth himſelf upon the country, *&c.*

And the ſaid *A.* thereupon craveth leave to imparle, and he hath it, *&c.* and afterwards the ſaid *A.* cometh again here into court in this ſame term in his proper perſon, and the ſaid *Edmund*, altho' ſolemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered that the ſaid *A.* recover his ſeiſin againſt the ſaid *C.* of the tenements aforeſaid, with the appurtenances; and that the ſaid *C.* have of the land of the aforeſaid *W.* and *M.* to the value, *&c.* And further-

more

more, that the ſaid *W.* and *M.* have of the land of the ſaid *Edmund*, to the value, *&c.* and the ſaid *Edmund* in mercy, *&c.* And hereupon the ſaid *A.* prays a writ of the lord the king, to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements aforeſaid, with the appurtenances, to be delivered to him, and it is granted to him, returnable here * forthwith, *&c.* Afterwards, that is to ſay, the ſeventh day of *May* in this ſame term, the ſaid *A.* cometh here into court in his proper perſon, and the ſheriff, namely, *R. S.* eſquire, now returneth, that he, by virtue of the aforeſaid *writ to him directed*, on the † *fifth* day of the

---

* *Or*, returnable here in *three weeks from* Michaelmas *day* (*or as the return is*) at which day the ſaid *A.* cometh here—

Note; you may get ready your writ of ſeiſin, and ſeal it, and return it with your writ of entry. The writ of ſeiſin ought to be made returnable at leaſt 15 days after the teſte day of the return of the writ of entry; but if the writ of entry be returnable towards the latter end of the term, ſo that there are not 15 days between the return of the writ of entry and the laſt return of the term, then the writ of ſeiſin muſt always be made (*returnable indilate*) and the writ of ſeiſin muſt always bear *Teſte* the teſte-day of the return of the writ of entry, when there is no ſummons. But if the writ of entry be made returnable the laſt return of the term, then the writ of ſeiſin muſt be returnable the firſt return of the ſubſequent term.

† You may ſuppoſe ſeiſin to be delivered any reaſonable time (ſo it be not on a *Sunday*) between the *Teſte* and return, allowing that a man might ride from *Weſtminſter* to the land, and back again by that time, which may be ſuppoſed to be done in ſix days, in any part of *England*.

ſame month of *May*, did cauſe full ſeiſin of the tenements aforeſaid, with the appurtenances, to be delivered to the aforeſaid *A.* as by the ſaid writ he was commanded, *&c.* All and ſingular which premiſſes, at the requeſt of the ſaid *A.* by the tenor of theſe preſents, we have commanded to be exemplified, in teſtimony whereof, we have cauſed our ſeal, appointed for ſealing of writs in the bench aforeſaid, to be affixed to theſe preſents. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the * *ſeventh* day of *May*, in the———year of our reign.

Thus far as on the roll.

The writ of ſummons for the firſt vouchee.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *S.* greeting. Summon by good ſummoners (*the vouchee*) that he be before

---

* You muſt teſte your exemplification after the return of the writ of ſeiſin, if ſuch writ be returnable in the ſame term in which judgment was given; but if the writ of ſeiſin be returnable of a ſubſequent term, then you *Teſte* your exemplification the laſt day of the term in which judgment was given. And obſerve that immediately after the awarding the *return* of the writ of ſeiſin, you go on in the exemplification, *All and ſingular which premiſſes* [&c. as in the foregoing,] and then upon the folding up of the bottom of the exemplification you indorſe the return of the ſheriff thus, *At which day the ſaid* A. B. *cometh here into court in his proper perſon, and the ſheriff namely* R. S. *eſquire, now returneth* [&c. as before. But on the roll you make no ſuch diſtinction.

our

our juſtices at *Weſtminſter the return**) to warrant to (*the tenant*) one meſſuage and ten acres of land, with the appurtenances in *D.* which (*the demandant*) in our court before our juſtices at *Weſtminſter* claimeth as his right by our writ of entry upon diſſeiſin in *le poſt* againſt the ſaid (*the tenant*) and whereof the ſaid (*the tenant*) in our ſaid court, hath vouched the ſaid (*the vouchee*) to be ſummoned in your county, to warrant againſt the ſaid (*the demandant*) and have then there the ſummoners and this writ. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the † —— day of —— in the —— year of our reign.

Summons for the ſecond vouch.e.

GEORGE the third [*&c.*] to the ſheriff of *S.* greeting. Summon by good ſummoners (*the ſecond vouchee*) that he be before our juſtices at *Weſtminſter* (*the fourth*

---

* There were formerly nine returns, between the return of the writ of *Entry* and return of the writ of *Summons*, and ſo betwixt one writ of ſummons and another; but by the *Statute* 17 *Car.* 2. *cap.* 6. they are abridged to five returns incluſive. And by the *Statute* 24 *Geo.* 2. *c.* 48. to four returns incluſive. For example, if the writ of entry be returnable, on the morrow of *All Souls day*, then the writ of ſummons muſt be returnable, *in fifteen days from the day of St.* Martin, accounting the return of the writ of entry for one, and then the fourth return is the ſummons: And ſo it is betwixt one ſummons and another.

† The firſt writ of ſummons muſt bear teſte the fourth day incluſive from the return of the writ of entry, and ſo a ſecond ſummons from the return of the firſt.

return from the first summons inclusive) to warrant to (*the first vouchee*) whom (*the tenant*) in our court before our said justices at *Westminster*, heretofore did vouch to warrant, one messuage (*reciting the parcels*) which (*the demandant*) in our said court claimeth as his right, by our writ of entry upon disseisin in *le post* against the said (*the tenant*) and whereupon the said (*the first vouchee*) in our said court hath further vouched the said (*the second vouchee*) to be summoned in your county, to warrant against the said (*the demandant*) and have then there the summoners and this writ. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the—— day of—— (*Teste the appearance day of the return of the first summons*) in the——year of our reign.

The writ of seisin.

GEORGE the third [*&c.*] to the sheriff of——greeting. Know you that (*the demandant*) in our court before our justices at *Westminster*, hath recovered his seisin against (*the tenant*) of one messuage (*reciting the parcels*) by our writ of entry upon disseisin in *le post*; and therefore we command you, that without delay you cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to the said (*the demandant*) and in what manner you shall have executed this our command, that you make appear to our justices at *Westminster* * forthwith, and

* Returnable immediately, because not 15 days in the term from the teste, the teste being the fourth day after inclusive from the return of the second summons, if it be not *Sunday*.

that

that you have then there this writ. Witneſs, (*&c.*)

By virtue of this writ to me directed on the *——day of ——in the year within written, I cauſed full ſeiſin of the tenements within ſpecified, with the appurtenances, to be delivered to the within named (*the demandant*) as within I am commanded.

T. T. eſquire, ſheriff.

The return. You return this yourſelf.

If the recovery be with a treble voucher, you enter it as before, to

—— And the ſaid *W.* and *M.* (*his wife*) tenants by their own warranty defend their right when, *&c.* and thereupon they further vouch to warrant *J. S. gentleman* (*the ſecond vouchee*) ſummoned in the county aforeſaid; let them have him here (*the return*) by the aid of the court, *&c.* the ſame day is given here, as well to the ſaid *A.* and *C.* as to the ſaid *W.* and *M.* tenants by their warranty, *&c.* At which day come here as well the ſaid *A. B.* in his proper perſon, as the ſaid *C. D.* and the ſaid *W. W.* and *M.* (*his wife*) by their attorney aforeſaid: And the ſaid *J. S.* being ſummoned, *&c.* cometh likewiſe by *K. L.* his attorney, and freely warrants the tenements aforeſaid, with the appurtenances, to the ſaid *W.* and *M. &c.* and thereupon the ſaid *A.* demandeth againſt the ſaid *J.*

A recovery with treble vouchers.

* Any reaſonable day between the teſte and return.

(*who vouches the common vouchee as* W. W. &c. *the firſt vouchee did in the former, and ſo proceed till you come to the judgment*) and that the ſaid *C.* have of the land of the ſaid *W.* and *M* to the value, *&c.* and further, that the ſaid *W.* and *M. &c.* have of the land of the ſaid *J.* to the value, *&c.* and furthermore, that the ſaid *J.* have of the land of the ſaid *Edmund*, to the value, *&c.* and the ſaid *Edmund* in mercy, *&c.* and hereupon the ſaid *A.*—(*as in the former.*)

BILL of DISBURSEMENTS on ſuffering a COMMON RECOVERY, in a PLEA of LAND.

Michaelmas Term, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Peruſing writings and papers, and drawing deed to lead the uſes	0	0	0	0	6	8	0	13	4
Precipe for entry, and copy for curſitor	0	0	0	0	1	6	0	3	0
Writ of entry and fine	0	8	0	0	11	4	0	14	2
King's fine	5	10	0	5	10	6	5	10	6
Attending to compound ſame	0	0	0	0	3	4	0	6	8
Alienation fees	0	3	6	0	3	6	0	3	6
Attorney-general's hand to entry	0	10	0	0	10	0	0	10	0
Attending him	0	0	0	0	1	8	0	3	4
Returning writ of entry	0	1	6	0	1	9	0	2	0
Precipe for bar and copy	0	0	0	0	1	6	0	3	0
Entring ſame on remembrance roll	0	0	0	0	1	6	0	3	0
Tenant's appearance at bar	0	0	0	0 0	3 3	4 4	0 0	6 6	8 8
Serjeants for arrangement of recovery, for demandant, tenant, firſt and ſecond vouchees	0	8	0	0	10	8	0	13	4
Attending thereon	0	0	0	0	3	4	0	6	8

Prothonotary,

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Prothonotary, ſecondary, and criers	0	5	0	0	5	0	0	5	0
Recovery and award of ſeiſin, and copy 8 *d.* a folio	0	0	0	0	8	0	0	16	0
Entring ſame on roll	0	0	0	0	6	0	0	12	0
To prothonotaries for entry	0	11	0	0	12	9	0	14	6
Stamp and parchment for exemplification	0	13	6	0	13	6	0	13	6
Exemplifying recovery, fo. 15	0	0	0	0	12	6	1	5	0
Sealing and box	0	3	0	0	3	0	0	3	0
Writ of ſeiſin	0	2	8	0	7	2	0	11	8
Returning	0	1	6	0	1	9	0	2	0
Filing writs of entry, and ſeiſin	0	2	0	0	2	0	0	2	0
Term fees demandant, tenant, firſt and ſecond vouchee	0	0	0	0	13	4	1	6	8
Letters, *&c.*	0	0	0	0	1	0	0	2	0
Execution of deed to make tenant to *precipe*	0	0	0	0	3	4	0	6	8

Precedents of declarations, &c.

Hampſhire, *to wit.* *J.* *R.* and *E.* his wife, by *W.* *S.* their attorney, demand againſt *A. W.* the third part of two meſſuages and two gardens, with their appurtenances, in *Goſport*, as the dower of the ſaid *E.* of the endowment of *A. W.* deceaſed, her late huſband, by writ of our lord the king of dower, whereof ſhe hath nothing, &c. *Count in dower.*

And the ſaid *A.* the now defendant, by *R. P.* his attorney cometh, and ſaith nothing in bar of the ſaid action of the ſaid *J.* and *E.* whereby the ſaid *J.* and *E.* remain againſt the ſaid *A.* the now defendant thereof undefended. Therefore it is conſidered, that the ſaid *J.* and *E.* recover againſt the ſaid *A.* the now defendant, their ſeiſin of the third part above demanded, with the appurtenances, to be held by them in ſeveralty by metes and bounds; and nothing of the mercy of the ſaid *A.* the now defendant, becauſe he came the firſt day by ſummons, &c. And hereupon the ſaid *J.* and *E.* ſay, that the ſaid *A.* late huſband of the ſaid *E.* died ſeiſed of the tenements aforeſaid, with their appurtenances in his demeſne as of fee, and pray a writ of the ſaid lord the king to be directed to the ſheriff of the county aforeſaid, as well to give them full ſeiſin of the ſaid third part with the appurtenances, as to inquire of damages, &c. And it is granted to them, returnable here, &c. [*the return.*] *Judgment by Nil dicit.* *Writ of ſeiſin and inquiry awarded.*

At which day here come the ſaid *J.* and *E.* by their ſaid attorney, and the ſheriff, *to wit*, ——— now returneth, that he, by virtue of the ſaid writ to him directed, on the 20th day of *November* laſt paſt, did cauſe full ſeiſin of the third part of the tenements aforeſaid, with the appurtenances (that is to ſay) of one meſſuage, *&c.* to hold the ſame to the ſaid *J. R.* and *E.* in ſeveralty by metes and bounds, for and in the name of the whole dowry of the ſaid *E.* of the tenements aforeſaid, with the appurtenances, happening to her by the death of the ſaid *A.* her late huſband, as by the ſaid writ he was commanded, *&c.* The ſame ſheriff here alſo returneth a certain inquiſition taken before him at the houſe of ——— at —— in the ſaid county, the ——— day of ——— ——— laſt paſt, by the oath of 12, *&c.* by virtue of the writ aforeſaid, taken, by which it is found, that the ſaid *A. W.* deceaſed, late huſband of the ſaid *E.* in the ſaid writ named, on the ——— day of —— in the year of our Lord ———, died ſeiſed of and in the tenements aforeſaid, with the appurtenances, in the ſaid writ ſpecified, in his demeſne as of fee, and that the ſaid tenements are of the clear yearly value in all iſſues beyond reprizes of 12*l.* and that 20 years are elapſed ſince the death of the ſaid *A.* the late huſband, *&c.* and that the ſaid *J.* and *E.* have ſuſtained damages by reaſon of detaining of the dower aboveſaid, beſides their coſts and charges by them laid out about their ſuit in this behalf to 80*l.* and for

for thoſe coſts and charges to 40*s.* Therefore it is conſidered, that the ſaid *J.* and *E.* recover againſt the ſaid *A.* the now defendant, as well the value of the third part of the tenements aforeſaid, with the appurtenances, from the time of the death of her ſaid late huſband, *&c.* (which ſaid value from the time of the death of the ſaid *A.* late the huſband of the ſaid *E.* amounteth to 80*l.*) as their damages aforeſaid to 82*l.* by the inquiſition aforeſaid in form aforeſaid found, and alſo 8*l.* 10*s.* to the ſaid *J.* and *E.* at their requeſt, for their coſts and charges aforeſaid, by the court here for increaſe adjudged, which ſaid value and damages in the whole amounted to ——, *&c.* *Signed 4th Feb. 1735.*

And the ſaid *W.* by *H. B.* who is admitted by the court of the king here to defend in this behalf for the ſaid *W.* who is under the age of 21 years, as the guardian of the ſaid *W.* cometh and ſaith, that from the death of the ſaid *J.* late huſband of the ſaid *M.* he hath been always ready, and ſtill is ready to render to the ſaid *M.* her dower, of the ſaid tenements and premiſſes, with the appurtenances, and rendereth the ſame here in court to the ſaid *M.* *Defendant by guardian ſays, he was always ready to render dower.*

And thereupon the ſaid *M.* prayeth leave to imparl here until the morrow of *All Souls*, and ſhe hath it, *&c.* The ſame day is given to the ſaid *W.* here, *&c.* At which day came here the aforeſaid *M.* by her attorney aforeſaid, and the ſaid *W.* by his guardian aforeſaid; and becauſe the ſaid *M.* doth not deny *Imparlance.*

Judgment. deny the plea of the ſaid *W.* Therefore it is conſidered, that the ſaid *M.* do recover her ſeiſin againſt the ſaid *W.* of the third part of the tenements aforeſaid, with the appurtenances, and nothing of mercy, becauſe the ſaid *W.* came on the firſt day of the ſummons, *&c.* And hereupon the ſaid *M.* ſaith, that the ſaid *J.* her former huſband, *&c.* died ſeiſed of the tenements aforeſaid, with the appurtenances, whereof, *&c.* in his demeſne as of fee; and ſhe prayeth a writ of our ſovereign lord the king, to be directed to the ſheriff of the county aforeſaid, as well to cauſe full ſeiſin to be made to her of the ſaid third part of the ſaid tenements with the appurtenances, as alſo to inquire of damages, *&c.* And becauſe by the confeſſion of the ſaid *W.* above it ſeemeth to the court here, that the ſame *W.* from the death of the ſaid *J.* was always ready to render to the ſaid *M.* her dower of the tenements aforeſaid, with the appurtenances, by reaſon whereof the ſaid *M.* ought not to recover the value of third part of thoſe tenements, nor her damages, by occaſion of the detaining her dower aforeſaid, from the time of the death of the ſaid *J.* her ſaid former huſband, until the day of the iſſuing out the ſaid original writ of the ſaid *M.* againſt the ſaid *W. to wit*, from the ſixth day of *February* in the year of our Lord 1735. And it ſeemeth to the juſtices here, that the ſaid *M.* ought to recover againſt the ſaid *W.* the value of the third part of the tenements aforeſaid, with the appurtenances, and her damages occaſioned

Writ of ſeiſin and inquiry.

ſioned by detaining her dower aforeſaid, from the aforeſaid day of iſſuing out the original writ aforeſaid, if, &c. Therefore the ſheriff is commanded, that he cauſe to be made to the ſaid *M.* full ſeiſin of a third part of the tenements aforeſaid, with the appurtenances; and that by the oath of good and lawful men of his bailiwic he diligently inquire, if the ſaid *J.* died ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee-ſimple, or in fee-tail; and if he ſhall ſo find by their inquiſition, then that he inquire upon their oath, how much the tenements aforeſaid are worth by the year in all iſſues above repriſes, according to the juſt value thereof; as alſo what damages the aforeſaid *M.* hath ſuſtained, as well by occaſion of the detaining her dower aforeſaid from the ſaid day of the iſſuing the original writ aforeſaid, beyond the value thereof, as for her expences and coſts by her laid out in this ſuit; and the inquiſition, &c.

And the ſaid *T. A.* by *R. H.* his attorney cometh and ſaith, that the ſaid *M.* ought not to have her dower of the ſaid tenements, with the appurtenances, by the endowment of the ſaid *J.* her late huſband, becauſe he ſaith, that the ſaid *J.* her late huſband, &c. neither at the day when he married the ſaid *M.* nor at any time afterwards, was ſeiſed of the ſaid tenements, with the appurtenances, whereof, &c. of ſuch an eſtate as he could thereof endow the ſaid *M.* And of this he puts himſelf upon the country; and the ſaid *M.* doth ſo likewiſe, &c. Therefore, &c.

Plea in dower, huſband not ſeiſed.

Middleſex,

Debt on a judgment.

Middleſex, *to wit*, *R. D.* late of *London*, carpenter, was ſummoned to anſwer unto *L. P.* of a plea, that he render to him 62 *l.* of lawful money of *Great Britain*, which he oweth to, and unjuſtly detaineth from him, *&c.* And whereupon the ſaid *L.* by *J. C.* his attorney, ſaith, that whereas the ſaid *L.* heretofore, that is to ſay, in *Eaſter* term in the 4th year of the reign of his preſent majeſty king *George* the third, in his ſaid majeſty's court before Sir ——— —— knight. and his companions, then his ſaid majeſty's juſtices of the bench here at *Weſtminſter* in the county of *Middleſex*, by the conſideration of the ſame court recovered againſt the ſaid *R.* 62 *l.* which were adjudged to the ſaid *L.* in the ſame court for his damages which he had ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings then lately made by the ſaid *R.* to the ſaid *L.* as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted, as by the record and proceedings thereof now remaining in his ſaid majeſty's ſaid court here, *to wit*, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, may appear; which ſaid judgment ſtill remaineth in its full ſtrength, force and effect, not reverſed, vacated, annulled, diſcharged or ſatisfied; and the ſaid *L.* hath as yet obtained no ſatisfaction of the aforeſaid judgment, whereby an action hath accrued to the ſaid *L.* to demand and have of the ſaid *R.* the ſaid 62 *l.* yet the ſaid *R.* (although often requeſted) hath not yet paid the ſaid

62*l.* or any part thereof, to the ſaid *L.* but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *L.* 20*l.* And thereof he bringeth ſuit, *&c.*

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court before Sir knight, and his brethren, his ſaid majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath above alledged: And this he is ready to verify; therefore prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, *&c.* *Plea* Nul tiel record.

And the ſaid *L.* ſaith, that he by any thing before alledged ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith, that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record; and he prayeth, that the ſaid record may be inſpected and ſeen by the juſtices here, *&c.* And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is told by the ſaid court here to the ſaid *L.* that he have the ſaid record here on ——— The ſame day is given to the ſaid *R.* here, *&c.* *Replication*, Habetur tale record'

Cooke.

Michaelmas *term in the first year of the reign of king* George *the third.*

Debt by administrator de bonis non, &c. *on a judgment recovered by teſtator.*

Middleſex, *to wit*, LEWIS *Weſtcombe*, otherwiſe called *Weſtcombe* late of *Rockley* in the county of *York*, eſq; was ſummoned to anſwer *Robert Richardſon*, eſq; adminiſtrator of the goods and chattels, rights and credits which were of *Robert Fairbeard*, eſq; deceaſed, at the time of his death, by *Anne Swinburne*, widow, executrix of the teſtament of the ſaid *Robert Fairbeard*, unadminiſtered, with his teſtament annexed, of a plea, that he render to the ſaid *Robert Richardſon* 602 *l.* 10 *s.* of lawful money of *Great Britain*, which he unjuſtly detaineth from him; and whereupon the ſaid *Robert Richardſon*, by *Francis Woodhouſe* his attorney ſaith, that whereas lately, *to wit*, in the term of St. *Hilary* in the fifth year of the reign of our ſovereign lady *Anne* late queen of *Great Britain*, &c. in the court of our ſaid lady the late queen, before the then juſtices of our ſaid lady the late queen of the bench at *Weſtminſter*, he the ſaid *Robert Fairbeard*, by the conſideration of the ſame court recovered againſt the ſaid *Lewis*, by the name of *Lewis Weſtcome*, late of *Rockley* in the county of *York*, eſq; as well a certain debt of 600 *l.* as 50 *s.* which were adjudged to the ſaid *Robert Fairbeard* for his damages which

which he had by occaſion of the detaining that debt, whereof the ſaid *Lewis* was convicted, as by the record and proceſs thereof now remaining in the court of our lord the preſent king of the bench at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex* plainly appeareth; and the ſaid *Robert Richardſon* further ſaith, that the ſaid judgment ſtill remaineth in its full force, ſtrength and effect, no ways ſatisfied, reverſed or annulled; and that the ſaid *Robert Fairbeard* in his lifetime, or the ſaid *Anne Swinburne* in her lifetime, or either of them, or he the ſaid *Robert Richardſon* after the death of the ſaid *Anne* (* to which ſaid *Robert Richardſon* admini-

---

* If an archdeacon commits adminiſtration, it need not be ſhewed by what authority, for he is *Oculus epiſcopi, & de jure ordinario* is to commit adminiſtration. *Cluberton* and *Trudgeon*, *Cro. Jac.* 556. *Style* 54. 1 *Lev.* 193. So if granted by an official. *Cro. Eliz.* 102. 2 *Mod.* 65. By commiſſary. 1 *Lutw.* 9. By chancellor. *Littlet. Rep.* 79, 80. 1 *Leon.* 312. *Hetl.* 68. *Per vicarium generalem in ſpiritualibus epiſcopi B. &c.* 1 *Lev.* 312. If granted by dean, it muſt be ſhewed by what authority. *Cro. Eliz.* 791. So if granted by *A. B. Sacræ theologiæ* profeſſor. *Morgan* and *Williams*, *Moor* 367. *Pl.* 504. *Cro. Eliz.* 431. Where granted by archbiſhop, it need not be ſhewed there were *Bona notabilia*. *Woodward* and *Thomſon*, *Cro. El.* 907. Nor need be ſhewed whether as ordinary, or by his prerogative. *Cro. Eliz.* 6. It is ſufficient to ſhew, that the king granted adminiſtration without ſhewing his power, for he hath univerſal juriſdiction. *All.* 53. 1 *Sid.* 302. Though in a declaration the biſhop's authority to grant adminiſtration need not be ſhewed; yet it is otherwiſe in a bar. *Chard* and *Bird*, *Cro. Eliz.* 838. And for this diverſity *vide*

miniſtration of the goods and chattels, rights and credits which were of the ſaid *Robert Fairbeard* at the time of his death unadminiſtered by the ſaid *Anne*, after the death of the ſaid *Anne*, *to wit*, on the 20th day of *July* in the year of our Lord 1727, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, was in due manner, (with the teſtament of the ſaid *Robert Fairbeard* annexed) committed by *William*, by Divine Providence archbiſhop of *Canterbury*) have not, nor hath any one of them ſued out execution againſt the ſaid *Lewis* upon the ſaid judgment for the debt and damages aforeſaid; whereby an action hath accrued to the ſaid *Robert Richardſon*, as adminiſtrator as aforeſaid, to demand and have of the ſaid *Lewis* the ſaid 602*l.* 10*s.* *Yet* the ſaid *Lewis*, although often required, *&c.* hath not paid the ſaid 602*l.* 10*s.* to the ſaid

---

1 *Leon.* 312. *Lit.* 79, 80. 1 *Sid.* 302. *Style* 106, 282. 1 *Lev.* 193.——*Palm.* 97, 98. And a diverſity taken where committed by one that hath a particular juriſdiction within a certain circuit, for there it ought to be ſpecially ſhewed, that he is ordinary of that place; but otherwiſe where committed by an archbiſhop who hath epiſcopal juriſdiction, and the power of the biſhop. *Skidmore* and *Winſton*, *Cro. Eliz*, 879. 1 *Sid.* 228, 302. *Style* 54. 1 *Salk.* 38. 4 *Mod.* 133.

If ſhewed that adminiſtration was *debito modo* granted to the plaintiff *per* A. B. *Commiſſarium & officialem peculiaris juriſdictionis de* B. it is well enough without ſhewing he had power to grant adminiſtration, for every peculiar hath an ordinary. *Denham* and *Stephenſon*, *Salk.* 40. *Maſon* and *Hampton*, 4 *Mod.* 133. 1 *Show.* 355. *Comb.* 196. 6 *Mod.* 241.

Robert

Robert Fairbeard in his life-time, or to the ſaid *Anne Swinburne* after the death of the ſaid *Robert Fairbeard*, or to either of them, or to the ſaid *Robert Richardſon*, after the death of the ſaid *Anne*; but refuſed to pay the ſame to the ſaid *Robert Fairbeard* in his life-time, and to the ſaid *Anne Swinburne* after the death of the ſaid *Robert Fairbeard*, and ſtill refuſeth to pay the ſame to the ſaid *Robert Richardſon*, and unjuſtly detaineth, in delay of the adminiſtration of the goods and chattels, rights and credits of the ſaid *Robert Fairbeard* unadminiſtered by the ſaid *Anne Swinburne* in her life-time, and to the damage of the ſaid *Robert Richardſon* of 10*l.* and thereof he bringeth his ſuit, *&c.* * And the ſaid *Robert Richardſon* bringeth here into court the ſaid letters of adminiſtration, which

---

* If one brings an action as adminiſtrator, he muſt make a *Profert in cur.* of his letters of adminiſtration, by which he is intitled to the action. *Cuts* and *Bennet*, *Cro. Jac.* 409, 412. Held matter of ſubſtance; diverſity where one brings an action, and where one pleads an adminiſtration in bar. *Cart.* 227. 6 *Mod.* 242 *Cro. Jac.* 556. *Vide* 1 *Sid.* 98. *Style* 236, 282. A verdict did not help, becauſe not neceſſary to be proved on the trial. But it is now remedied by 16 & 17 *Car.* 2. *Salk.* 38. 4 *Mod.* 133. *Comb.* 196.

After verdict, judgment ſhall not be ſtayed or reverſed for want of a *Profert in curia* of any letters of adminiſtration. *Stat.* 16 & 17 *Car.* 2. *c.* 8.

No advantage or exception ſhall be taken for the default of alledging the bringing into court letters of adminiſtration; but the court ſhall give judgment according to the right, unleſs the ſame be particularly ſet down, and ſhewed for cauſe of demurrer. *Stat.* 4 & 5 *Ann. c.* 16.

teſtify the committing the ſaid adminiſtration in form aforeſaid; the date whereof is on the day and year in that behalf above-mentioned, *&c.*

Debt on a judgment of the palace court.

Surrey, *to wit*, *J. M.* late, *&c.* was ſummoned to anſwer *H. G.* of a plea, that he render to him 99*s.* and 8*d.* which he oweth to and unjuſtly detaineth from him, *&c.* And thereupon the ſaid *H.* by *J. C.* his attorney ſaith, that whereas the ſaid *H.* (that is to ſay) at the court of the king's palace at *Weſtminſter*, held before the judges of the ſaid court there (*to wit*, at *Southwark* in the county of *Surrey* aforeſaid, within the juriſdiction of the ſaid court, on *Friday* the 23d day of *January* in the ſixth year of the reign of the preſent king, by conſideration of the ſaid court recovered againſt the ſaid *J. M.* (by the name of *J. M.*) 99*s.* and 8*d.* which were aſſeſſed to the ſaid *H.* in the aforeſaid court of the king's palace at *Weſtminſter*, held before the ſaid judges of the ſaid court there, for his damages which he had ſuſtained, as well by occaſion of the not performing ſeveral promiſes and undertakings made by the ſaid *J. M.* to the ſaid *H.* as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *J.* is convicted, as by the record and proceedings thereof in the ſame court of the king's palace at *Weſtminſter*, held before the judges of the ſaid court there, *to wit*, at *Southwark* aforeſaid, in the county of *Surrey* aforeſaid, within the juriſdiction of the ſaid court there remaining

may appear; which ſaid judgment ſtill remaineth in the ſaid court there in full force, not in the leaſt ſatisfied, reverſed or diſcharged; and the ſaid *H. G.* hath not as yet ſued out any execution upon that judgment, by which an action hath accrued to the ſaid *H.* to require and have of the aforeſaid *J. M.* the aforeſaid 99*s.* and 8*d.* *Yet, &c.*

Plea, *Nul tiel record.*

Repl. *Habetur tale record.*'

And hereupon the ſaid *H.* prayeth the king's writ to be directed to the judges of the court of the kings palace at *Weſtminſter*, and to every of them, to certify to the juſtices of the ſaid lord the king here, whether there be ſuch record of ſuch recovery of the ſaid 99*s.* and 8*d.* againſt him the ſaid *J.* by the ſaid *H.* or not; and it is granted to him, returnable here ——— At which day here comes as well the ſaid *H.* as the ſaid *J.* by their attornies aforeſaid, and the ſaid judges of the court, namely, *W.* duke of *D.* ſteward of the king's houſhold, Sir *P. M.* knight, marſhal of the ſaid houſhold, and Sir *T. A.* knight, ſteward of the palace court aforeſaid, ſent to the juſtices here the record aforeſaid, whereof there is mention above made between the parties aforeſaid, and remaining before them; which ſaid writ and record remain filed amongſt the records here, without day, *&c.* Certiorari *to the judges of that court.*

Whereupon the ſaid *H.* prayeth judgment and his debt aforeſaid, together with his da-

mages by reaſon of detaining the ſaid debt, to be adjudged to him, *&c.*

Dickins.

Trinity *term in the eighth year of the reign of king* George *the third.*

Debt on bond by executor againſt an heir at law.

London, *to wit.* JOHN *Stout*, late of the town of *Hertford* in the county of *Hertford*, gent. brother and heir of *Henry Stout*, late of the iſland of *Jamaica*, eſq; deceaſed, otherwiſe lately called *Henry Stout*, *nunc in* London, *ſed de inſula* Jamaicæ, *armiger*, was ſummoned to anſwer *Sarah Fitter*, widow, executrix of the teſtament and laſt will of *James Fitter*, late of *London*, merchant, deceaſed, of a plea that he render to her 4330*l.* which he unjuſtly detaineth, *&c.* and whereupon the ſaid *Sarah*, by *Joſhua Sharpe* her attorney ſaith, that whereas the ſaid *Henry*, brother of the ſaid *John*, whoſe heir he is, in his life-time, *to wit*, on the fifth day of *November* in the year of our Lord 1765, at *London*, *to wit*, in the pariſh of *St. Mary Le Bow* in the ward of *Cheap*, by his writing obligatory acknowledged himſelf to be bound to the ſaid *James* in his life-time in the ſaid 4330*l.* to be paid to the ſaid *James* when he ſhould be thereunto required; and to which payment well and faithfully to be made he bound himſelf and his heirs by the ſaid writing; *Yet* the ſaid *Henry* in his life-time, and the ſaid *John*, brother

1 Lev. 103, 224.

brother and heir of the ſaid *Henry*, after the death of the ſaid *Henry* (although often required) have not, nor hath either of them paid the ſaid 4330 *l.* to the ſaid *James* in his life-time, or to the ſaid *Sarah* after the death of the ſaid *James*, but refuſed to pay the ſame to the ſaid *James* in his life-time, and to the ſaid *Sarah* after his death; and the ſaid *John* ſtill refuſeth to pay the ſame to the ſaid *Sarah*, and unjuſtly detaineth, in delay of the faithful execution of the ſaid teſtament: Whereupon ſhe ſaith ſhe is injured, and hath damage to the value of 20 *l.* and thereof ſhe bringeth ſuit, *&c.* And the ſaid *Sarah* bringeth here into court, as well the ſaid writing which teſtifieth the ſaid debt in form aforeſaid, whoſe date is the ſame day and year aforeſaid *, as the letters teſtamentary

---

* When one ſues as executor, he muſt in his declaration ſhew forth the teſtament to intitle him to the action. *Edwards* and *Stapleton*, *Cro. Eliz.* 551. *Cope* and *Lewin*, *Hob.* 38. 1 *Brownl.* 9. *Browning* and *Fuller*, *Cro. Jac.* 299. It is matter of ſubſtance, and not form only. 1 *Brownl.* 200. But whether ſubſtance or form. *Hob.* 233. *Cro. Jac.* 556. 2 *Saund.* 402. 1 *Sid.* 249. Diverſity taken, where upon the executor's own poſſeſſion, and where upon the poſſeſſion of the teſtator. 2 *Rol. Rep.* 428. *Hob.* 218. Where the want thereof is helped by the defendant's pleading thereto. 1 *Salk.* 37, 38. 6 *Mod.* 135. *Comb.* 465. *Noy* 63.

After verdict, judgment ſhall not be ſtayed or reverſed for want of a *Profert in curia* of any letters teſtamentary. *Stat.* 16, 17 *Car.* 2. *c.* 8.

No

teſtamentary of the ſaid *James*, whereby it appeareth to the court here, that the ſaid *Sarah* is executrix of the teſtament and laſt will of the ſaid *James*, and thereof hath the adminiſtration, *&c.*

Plea, Riens per diſcent. 1 Lev. 130, 224. Stat. 3, 4 W. & M. c. 14. 5 Mod. 122. Redſhaw *and* Heſter. Jeffry *and* Barrow, Paſ. 10 Annæ. Caſes in law and equity 18.

And the ſaid *John*, by *Thomas Smith* his attorney, cometh and defendeth the force and injury, when, *&c.* and ſaith, That he ought not to be charged with the debt aforeſaid, as brother and heir of the ſaid *Henry*, by virtue of the ſaid writing, becauſe proteſting, that the writing aforeſaid is not the deed of the ſaid *Henry*; *And* for plea ſaith, that he hath not any lands or tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, nor had on the day of obtaining the original writ of the ſaid *Sarah*, nor at any time ſince; and this he is ready to verify: Wherefore he prayeth judgment, if he ought to be charged with the debt aforeſaid, as brother and heir of the ſaid *Henry*, by virtue of the writing aforeſaid.

Lilly 147. *Replication.*

And the ſaid *Sarah* ſaith, that by any thing by the ſaid *John* above in pleading alledged, ſhe ought not to be precluded from having her ſaid action againſt him, becauſe ſhe ſaith, that before the day of ob-

---

No advantage or exception ſhall be taken for the default of alledging the bringing into court of letters teſtamentary, but the court ſhall give judgment according to the right, unleſs the ſame be particularly ſet down and ſhewn for cauſe of demurrer. *Stat.* 4. 5 *Ann. c.* 16.

taining

taining her ſaid original writ, *to wit*, on the 3d day of *April* in the 6th year of the reign of our ſaid lord the now king, the ſaid *John* had *ſufficient* lands and tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, whereout he might have ſatisfied the ſaid *Sarah* the debt and damages aforeſaid, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment, and that the ſaid debt, together with the damages by means of the detention of the ſaid debt, may be adjudged unto her, *&c.*

Rejoinder.

And the ſaid *John* ſaith, that before the day of obtaining the ſaid original writ of the ſaid *Sarah*, he had not *ſufficient* lands and tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, whereout he might have ſatisfied the ſaid *Sarah* the debt and damages aforeſaid *or any part thereof*, as the ſaid *Sarah* hath in replying above alledged: And of this he putteth himſelf on the country, *&c.* And the ſaid *Sarah* doth ſo likewiſe, *&c.*

Debt on a bond by ſurviving obligees.

Oxfordſhire, *to wit*, *A. H.* late, *&c.* (otherwiſe called, *&c.*) was ſummoned to anſwer *W. B. J. V.* and *T. B.* of a plea, that ſhe render to them 10*l.* of lawful money of *Great Britain*, which ſhe oweth to them, and unjuſtly detaineth, *&c.* and whereupon the ſaid *W. J.* and *T.* by *C. C.* their attorney ſay, that whereas the ſaid *A.* on the ——— day of ———, in the year of our Lord ——, at ——— in the county aforeſaid, by her certain writing obligatory had

had acknowledged herſelf to be bound to the ſaid *W.* and to one *V. S.* now deceaſed (whom the ſaid *W. J.* and *T.* ſurvived) and the ſaid *J.* and *T.* in the aforeſaid 10 *l.* to be paid to them the ſaid *W. V. J.* and *T.* when ſhe the ſaid *A.* ſhould be thereunto required; *Yet* the aforeſaid *A.* (though often required) hath not paid the ſaid 10 *l.* to the ſaid *W. V. J.* and *T.* or any of them, in the life-time of the ſaid *V.* or to the ſaid *W. J.* and *T.* or any of them, ſince the death of the ſaid *V.* (whom the ſaid *W. J.* and *T.* ſurvived) but hath refuſed to pay them the ſame, and yet doth refuſe to pay the ſame to the ſaid *W. J.* and *T.* Whereupon they ſay they are injured, and have damage to the value of 10 *l.* and thereof they bring ſuit, *&c.* And they bring here into court the ſaid writing obligatory, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is on the day and year aboveſaid, *&c.*

Debt on a bond by the executor of the obligee. Middleſex, *to wit*, *J. M.* late of *Weſtminſter* in the county of *Middleſex* aforeſaid, lime-merchant, otherwiſe called *J. M. de paroch. ſanct. Margar' Weſtminſt. in com. Middleſex*, —— was ſummoned to anſwer unto *W. F.* executor of the teſtament and laſt will of *R. F.* his late father deceaſed, in a plea, that he render to the ſaid *W. F.* 200 *l.* which he unjuſtly detaineth from him, *&c.* And whereupon the ſaid *W. F.* by *W. W.* his attorney ſaith, that whereas the aforeſaid *J.* the 22d day of *April* in the year

year of our Lord 1728, at *Weſtminſter* aforeſaid in the county aforeſaid, by his certain writing obligatory acknowledged himſelf to be held and firmly bound unto the aforeſaid *R. F.* in his life-time in the aforeſaid 200*l.* to be paid to the aforeſaid *R. F.* his executors or adminiſtrators, when he the ſaid *J.* ſhould be thereunto required: Nevertheleſs the aforeſaid *J.* (although often required) the aforeſaid 200*l.* to the aforeſaid *R. F.* in his life-time, or, to the aforeſaid *W. F.* after the deceaſe of the aforeſaid *R. F.* hath not paid, but hath refuſed to pay them the ſame, and ſtill refuſeth to pay the ſame to the ſaid *W. F.* and unjuſtly detaineth the ſame: Whereupon the ſaid *W. F.* ſaith that he hath ſuſtained damage to the value of 10*l.* and thereof he bringeth this ſuit, *&c.* And he bringeth here into court as well the writing obligatory aforeſaid, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is on the day and year aforeſaid, as alſo the letters teſtamentary of the aforeſaid *R. F.* whereby it ſufficiently appeareth to the court here, that the afoerſaid *W. F.* is the executor of the teſtament and laſt will of the aforeſaid *R. F.* and thereupon to have adminiſtration, *&c.*

Debt on a bond againſt the executor of the obligor.

J. J. late of, *&c.* executor of the teſtament and laſt will of *E. B.* deceaſed, was ſummoned to anſwer *J. T.* of a plea, that he render to him 120*l.* which he unjuſtly detaineth from him, *&c.* And whereupon the ſaid *J. T.* by *W. W.* his attorney ſaith, that whereas the above-named *E.* in her life-time,

time, *to wit*, on the —— day of ——, in the year of our Lord ——, at —— in the county of —— aforeſaid, by her writing obligatory acknowledged herſelf to be bound to the ſaid *J. T.* in the aforeſaid 120*l.* to be paid to the ſame *J. T.* when ſhe the ſaid *E.* ſhould be thereunto required; *Neverthelefs* the ſaid *E.* in her life-time, or the ſaid *J. J.* after the death of the ſaid *E.* although often required, have not, nor hath either of them paid the ſaid 120*l.* to the ſaid *J. T.* but they refuſed, and the aforeſaid *J. J.* doth ſtill refuſe to pay him the ſame; and whereupon the ſaid *T.* ſaith he is injured, and hath damage to the value of 10*l.* and thereof he bringeth his ſuit, *&c.* and he bringeth here into court the writing aforeſaid, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is on the ſame day and year aforeſaid.

Plea, Ne unques executor.

And the ſaid *J. J.* by *F. B.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *J. T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that he the ſaid *J. J.* never was executor of the teſtament and laſt will of *E. B.* deceaſed, as the ſaid *J. T.* by his ſaid declaration above alledgeth, neither did he ever as an executor of the teſtament and laſt will of the ſaid *E. B.* adminiſter any of the goods and chattels which were the ſaid *E. B.*'s at the time of her deceaſe; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J. T.*

J. T. ought to have his ſaid action againſt him, *&c.*

And the ſaid *J.* ſaith, that he ought not to be precluded from having his aforeſaid action againſt the ſaid *J.* becauſe he ſaith that the aforeſaid *J.* hath, as executor of the teſtament and laſt will of the ſaid *E. B.* adminiſtered divers goods and chattels which were of the ſaid *E. B.* at the time of her deceaſe, that is to ſay, at ——— aforeſaid: And this he prayeth may be inquired of by the country, *&c.* *Replication.*

Cooke.

Michaelmas *term in the ſeventh year of the reign of king* George *the third.*

Surrey, *to wit.* *J. L.* late of Saint *Olave* in *Southwark*, in the county of *Surrey* aforeſaid, woolſtapler, was attached by his preſent majeſty's writ of privilege iſſuing out of this court, to anſwer to *L. R.* gentleman, one of the attornies of his ſaid majeſty's court of common bench here, according to the liberties and privileges of the ſame court for ſuch attornies, and other miniſters of the ſame bench from time beyond the memory of man uſed and approved in the ſame court, in a plea of debt, and whereupon the ſaid *L.* in his proper perſon ſaith, that the ſaid *J.* hath not rendered to him the ſaid *L.* 63 *l.* 2 *s.* of lawful money of *Great Britain*, which he oweth to him, and unjuſtly detaineth, *Debt on a bail-bond at the ſuit of an attorney.*

taineth, for that whereas, on the 29th day of *June* in the 6th year of his preſent majeſty's reign, the ſaid *L.* (he being then one of the attornies of the ſaid court of common bench) ſued forth out of his majeſty's ſaid court of common bench here, *to wit*, at *Weſtminſter* in the county of *Middleſex*, his ſaid majeſty's writ, called a writ of attachment of privilege, againſt the ſaid *J. L.* woolſtapler, directed to the ſheriff of the ſaid county of *Surrey*, by which ſaid writ the ſaid ſheriff was commanded by his ſaid majeſty to attach the ſaid *J. L.* if he ſhould be found within his bailiwic, and him ſafely keep, ſo that he might have him before his ſaid majeſty's juſtices at *Weſtminſter*, on *Monday* next after three weeks from the day of Saint *Michael* then next following, to anſwer the ſaid *L.* one of the attornies of his ſaid majeſty's court of common bench, according to the liberties and privileges of that court for ſuch like attornies and other miniſters of the ſame bench uſed and approved of in the ſame, from the time whereof there was not any remembrance to the contrary, in a plea of *treſpaſs upon the caſe*, and that the ſaid ſheriff ſhould have there that writ; which ſaid writ afterwards, and before the return thereof, that is to ſay, on the 11th day of *Auguſt* in the year of our Lord 1766, at the ſaid pariſh of St. *Olave*, *Southwark*, in the ſaid county of *Surrey*, was delivered by the ſaid *L.* to *J. R.* then, and continually afterwards until the return of the ſaid writ, ſheriff of the ſaid county of *Surrey*, to be executed

executed in due form of law; by virtue of which ſaid writ the ſaid *J. R.* afterwards, and before the return of the ſaid writ, that is to ſay, on the ſaid 11th day of *Auguſt* in the ſaid year of our Lord laſt above-mentioned, at the ſaid pariſh of St. *Olave Southwark* aforeſaid, within his bailiwic, arreſted the ſaid *J. L.* and had and detained him there in his cuſtody by virtue of the ſaid writ, until the ſaid *J. L.* afterwards, and before the return of the ſaid writ, *to wit*, on the ſaid 11th day of *Auguſt* in the year of our Lord 1767, at the pariſh of St. *Olave Southwark* aforeſaid in the ſaid county of *Surrey*, by his writing obligatory, commonly called a bail-bond, *acknowledged himſelf* to be held and firmly bound to the ſaid *J. R.* by the name of *J. R.* eſq; high ſheriff of the county of *Surrey* aforeſaid, in the ſum of 63*l.* 2*s.* of good and lawful money of *Great Britain*, to be paid to the ſaid ſheriff when he ſhould be thereto required, with a condition thereunder written, that if the ſaid *J. L.* ſhould appear before his ſaid majeſty's juſtices at *Weſtminſter*, on the ſaid *Monday* next after three weeks from the day of Saint *Michael*, to anſwer the ſaid *L.* one of the attornies, and ſo forth, in the ſaid plea of treſpaſs upon the caſe, that then that obligation to be void and of no force; otherwiſe to ſtand and remain in full force, vigour and effect; which ſaid writing obligatory, with the ſaid condition there under written, was taken by the ſaid ſheriff by virtue of the ſaid writ, and by force of the ſtatute in

ſuch caſe lately made and provided. And the ſaid *L.* in fact ſaith, that the ſaid *J. L.* did not appear before his ſaid majeſty's juſtices at *Weſtminſter*, on the ſaid *Monday* next after three weeks from the day of Saint *Michael*, in the condition aforeſaid mentioned, to anſwer to the ſaid *L.* in his ſaid plea of treſpaſs upon the caſe, according to the form and effect of that condition, whereby that writing obligatory became forfeited to the ſaid *J. R.* and the ſame being ſo forfeited, and the money therein mentioned, or any part of it, not being paid, he the ſaid *J. R.* ſheriff of the ſaid county of *Surrey* afterwards, that is to ſay, on the firſt day of *November* in the year of our Lord 1737, at the ſaid pariſh of Saint *Olave Southwark*, aſſigned to the ſaid *L.* the ſaid writing obligatory, by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two credible witneſſes, *to wit*, *E. H.* and *G. N.* according to the form of the ſtatute in ſuch caſe made and provided; by reaſon of which ſaid premiſſes, and by force of the ſtatute in ſuch caſe made and provided, an action hath accrued to him the ſaid *L.* as aſſignee of the ſaid *J. R.* ſheriff of the ſaid county of *Surrey*, to demand and have of the ſaid *J. L.* the ſaid ſum of 63*l.* 2*s.* Nevertheleſs the ſaid *J. L.* (although often requeſted) hath not rendered the ſaid ſum of 63*l.* 2*s.* to the ſaid *L.* but hitherto always hath refuſed, and ſtill doth refuſe, to render the ſame to the ſaid *L.* and the aforeſaid ſum of money mentioned in the ſaid writing

writing obligatory is ſtill remaining unſatiſfied, to the damage of him the ſaid *L.* of 40*s.* and thereof he bringeth ſuit, *&c.* And the ſaid *L.* bringeth here into court the writing obligatory aforeſaid, in form aforeſaid indorſed, which teſtifieth the ſaid debt in manner aforeſaid, and beareth date the day and year in that reſpect above-mentioned, *&c.*

John Doe, and *Richard Roe*, } Pledges for proſecuting.

Hilary *term*, &c.

London, *to wit*, } *O. W.* late of *London*, linen-draper, was ſummoned to anſwer our lord the king, and *J. C.* who as well for our ſaid lord the king as for himſelf proſecuteth in this behalf, of a plea that he render to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* 1260*l.* which to our ſaid lord the preſent king and the ſaid *J. C.* who as well, *&c.* he oweth and unjuſtly detaineth, and whereupon the ſaid *J. C.* who as well for our ſaid lord the king as for himſelf proſecuteth in this behalf by *W. W.* his attorney, ſaith, that by a certain indenture made at *London* aforeſaid, *to wit*, in the pariſh of Saint *Mary le Bow* in the ward of *Cheap*, after the firſt day of *May* in the year of our Lord 1710. *to wit*, on the 21ſt day of *Auguſt* in the year of our Lord 1763. between one *T. H.* ſon of *W. H.* late of *C.* in the

Declaration in debt Qui tam *on the ſtat.* 8 Anne, c. 9. ſ. 35. *For not inſerting in indentures of apprenticeſhip the full ſum received.*

county of *Derby*, eſq; deceaſed, and the ſaid *O. W.* and in due manner executed, bearing date on the ſame day and year, the ſaid *T.* put himſelf apprentice to the ſaid *O.* by the name of *O. W.* citizen and leather-ſeller of *London*, to be inſtructed in his art and buſineſs of a linen-draper, to ſerve as an apprentice from the day of the date of the ſaid indenture, until the full end and term of ſeven years from thence next enſuing fully to be complete and ended; which ſaid indenture, then and there made and executed, contained all the covenants, articles, contracts and agreements, relating to the ſerving the ſaid apprenticeſhip; and that in conſideration of the premiſſes, and for and in reſpect of the ſaid apprenticeſhip, the ſaid *T.* then, *to wit*, on the ſaid 21ſt day of *Auguſt* in the ſaid year of our Lord 1763. at *London* aforeſaid, in the pariſh and ward aforeſaid, paid to the ſaid *W. O.* 300 pieces of coined gold money of *Great Britain*, called guineas, of the value in ready money of 315*l.* as a reward and conſideration for taking the ſaid *T.* to be his apprentice, as aforeſaid; and that the ſaid ſum of money of 300 pieces of coined gold ſo given and paid, as aforeſaid, was not truly and fully inſerted, written and ſpecified in the ſame indenture, according to the form of the ſtatute in ſuch caſe lately made and provided, but in the place of it the ſum of 300*l.* only was inſerted, written and ſpecified in the ſame indenture, contrary to the form and effect of that ſtatute, whereby an action has accrued to our ſaid lord the king

king and the ſaid *J. C.* who. as well, *&c.* to demand and have of the ſaid *O.* 630*l.* parcel of the ſaid 1260*l.* being double the ſum ſo given and paid as aforeſaid. *And alſo whereas* by one other indenture made at *London* aforeſaid, in the pariſh and ward aforeſaid, after the firſt day of *May* in the year of our Lord 1710. aforeſaid, *to wit*, on the ſaid 21ſt day of *Auguſt* in the year of our Lord 1763. between one *T. H.* another ſon of the ſaid *W. H.* late of *C.* in the county of *Derby*, eſq; deceaſed, and the ſaid *O. W.* and in due manner executed, bearing date on the ſame day and year, the ſaid laſt-mentioned *T.* put himſelf apprentice to the ſaid *O. W.* to be inſtructed in his ſaid art and buſineſs of a linen-draper, to ſerve him after the manner of an apprentice, from the day of the date of the ſaid laſt indenture, until the full end and term of ſeven years from thence next enſuing and fully to be complete and ended; which ſaid laſt indenture, then and there made and executed, contained all the covenants, articles and agreements relating to the ſerving the ſaid apprenticeſhip laſt mentioned; and that in conſideration of the premiſſes, and for and in reſpect of the ſaid apprenticeſhip laſt mentioned, the ſaid *T.* then, *to wit*, on the ſaid 21ſt day of *Auguſt* in the ſaid year of our Lord 1763. at *London* aforeſaid in the pariſh and ward aforeſaid, paid to the ſaid *O. W.* 315*l.* of lawful money of *Great Britain*, as a reward and conſideration for taking the ſaid laſt mentioned *T.* to be his apprentice as aforeſaid; and that the ſaid ſum of 315*l.* *Second count.*

ſo given and paid as aforeſaid, was not truly and fully inſerted, written and ſpecified in the ſaid laſt indenture, according to the form and effect of the ſtatute in ſuch caſe lately made and provided, but in the place thereof the ſum of 300*l.* only was inſerted, written and ſpecified in the ſaid laſt indenture, contrary to the form and effect of that ſtatute, whereby an action has accrued to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* to demand and have of the ſaid *O. W.* other 630*l.* reſidue of the ſaid 1260*l.* being double the laſt mentioned ſum ſo given and paid as aforeſaid; *Yet* the ſaid *O. W.* (although often required) hath not yet rendered the ſaid 1260*l.* or any parcel thereof, to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* or to either of them, but hath hitherto refuſed, and ſtill doth refuſe, to render the ſame to them, to the damage of the ſaid *J. C.* who as well, *&c.* of 10*l.* And thereof as well for our lord the king, as for himſelf, he bringeth ſuit, *&c.*

Debt againſt a ſheriff for an eſcape.

London, *to wit*, *H. H.* late of *London*, knight, and *R. A.* late, *&c.* eſq; were ſummoned to anſwer unto *R. C.* in a plea that they render to him 13*l.* which they owe, and unjuſtly detain from him, *&c.* and whereupon the ſaid *W.* by *J. T.* his attorney ſaith, that whereas the ſaid *W.* by the name of *W. C.* otherwiſe, *to wit*, in the term of the holy *Trinity* in the 6th and 7th years of the reign of the lord the now king, in the court of our lord the now king of the common

common bench at *Weſtminſter*, before Sir knight and his companions, then juſtices of our lord the king of the ſame bench at *Weſtminſter*, did recover by judgment of the ſaid court againſt *T. B.* by the name of *T. B.* 13*l.* for damages, which he the ſaid *W. C.* hath ſuſtained by reaſon of the ſaid *T*'.s not performing certain promiſes and undertakings then lately made to the ſaid *W.* as for his coſts and charges by him laid out about the ſaid ſuit whereof the ſaid *T.* is convicted, as by the record and proceedings thereof remaining in the ſaid court may more fully appear; and the ſaid *W. C.* afterwards, *to wit*, the 13th day of *June* in the fifth year of the reign of the lord the now king, proſecuted out of the ſaid court of common bench, of and upon the ſaid judgment, a certain writ of the lord the now king, directed to the ſheriffs of *London*, by which writ the lord the now king commanded them that they ſhould take *T. B.* if he was to be found in their bailiwic, and him ſafely keep, ſo that they might have his body before the juſtices of our lord the king at *Weſtminſter*, in ——— to ſatisfy *W. C.* for 13*l.* which in the court of the lord the king, before the juſtices of our lord the king at *Weſtminſter*, had been awarded to the ſaid *W. C.* for his damages which he had ſuſtained by reaſon of the not performing ſeveral promiſes and undertakings made by the ſaid *T.* to the ſaid *W.* at *W.* whereof he was convicted. And reciting, whereas the ſheriff of the lord the king, of *Middle-*

ſex had returned to the juſtices of the lord the now king at *Weſtminſter*, in ——— then laſt paſt, that the ſaid *T.* was not to be found in his bailiwic; and in as much as it was ſufficiently teſtified in the ſaid court of the lord the king, that he lurked and wandered up and down in their bailiwic, and that they ſhould have there that writ, which writ proſecuted as aforeſaid the ſaid *W. C.* afterwards, and before the return thereof, *to wit*, on the 30th day of *June* in the ſame 7th year of the lord the now king, at *London* aforeſaid, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, delivered to the ſaid *H. H.* and *R. A.* then being ſheriffs of *London* in due form of law to be executed; by virtue of which writ the ſaid *H. H.* and *R. A.* then being ſheriffs of *London* as aforeſaid, afterwards, and before the return of the ſaid writ, *to wit*, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, took and arreſted the ſaid *T.* and then and there had him in their cuſtody in execution for the ſaid damages; and the ſaid *T.* being ſo as aforeſaid in the cuſtody of the ſaid *H. H.* and *R. A.* then being ſheriffs of *London*, in execution for the damages aforeſaid, the ſaid *H. H.* and *R. A.* then being ſheriffs as aforeſaid, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, without the licence and againſt the will of the ſaid *W. C.* voluntarily permitted the ſaid *T.* to go out of their cuſtody at large where he would, the ſaid *W. C.*

C. of his ſaid damages then or yet not being ſatisfied, by reaſon whereof an action accrued to the ſaid *W. C.* to demand and have of the ſaid *H. H.* and *R. A.* the ſaid ſum of 13*l.* yet the ſaid *H. H.* and *R. A.* have not, nor hath either of them rendered to the ſaid *W. C.* the ſaid 13*l.* but altogether have, and each of them hath hitherto refuſed, and yet do, and each of them doth yet refuſe to render the ſaid 13*l.* to the ſaid *W. C.* wherefore he ſaith that he is damaged and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

Declaration on a policy of inſurance on a ſhip.

London, *to wit*, *J. B.* late of *London*, merchant, was attached to anſwer *R. S.* of a plea of treſpaſs on the caſe, *&c.* and whereupon the ſaid *R.* by *W. W.* his attorney complaineth, that whereas the ſaid *R.* the 17th day of *October* in the year of our Lord 1734. at *London* (that is to ſay) in the pariſh of St. *Mary le Bow*, in the ward of *Cheap*, according to the uſe and cuſtom of merchants, cauſed to be made a certain writing of inſurance, commonly called a policy of inſurance, by which ſaid writing the ſaid *R.* by the name of *R. S.* as well in his own name as for and in the name and names of all and every other perſon or perſons to whom the ſame did, might or ſhould appertain in part or in all, did make aſſurance, and cauſed himſelf and them, and every of them, to be inſured, loſt or not loſt, at and from *London* to *Rotterdam*, and thence to *Gambia*

Gambia and *Cape Coaſt*, upon any kind of goods and merchandizes whatſoever, loaden, or to be loaden aboard the good ſhip or veſſel called the *Dolphin*, whereof was maſter under God for that preſent voyage *J. N.* or whoſoever elſe ſhould go for maſter in the ſaid ſhip, or by whatſoever other name or names the ſame ſhip, or the maſter thereof, was or ſhould be named or called, beginning the adventure upon the ſaid goods and merchandizes from and immediately following the loading thereof aboard the ſaid ſhip at *London* or elſewhere, and ſo ſhould continue and endure until the ſaid ſhip, with the ſaid goods and merchandizes whatſoever, ſhould be arrived at *Rotterdam*, and during her ſtay there and thence to *Gambia*, and during her ſtay there and thence to *Cape Coaſt*, and the ſame there ſafely landed; and it ſhould be lawful for the ſaid ſhip in that voyage to ſtop and ſtay at any ports or places whatſoever, without prejudice to that Inſurance; the ſaid goods and merchandizes by that agreement were and ſhould be valued at ———, without farther account to be given by the aſſured for the ſame. Touching the adventures and perils which they the aſſurers were contented to bear, and did take upon them in that voyage, they were of the ſeas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, ſurprizals, takings at ſea, arreſt, reſtraints and detainments of all kings, princes and people, of what nation, condition or quality

quality ſoever, barratry of the maſter and mariners, and of all other perils, loſſes and misfortunes, that had or ſhould come to the hurt, detriment or damage of the ſaid goods and merchandizes, or any part thereof; and in caſe of any loſs or misfortune it ſhould be lawful for the aſſured, their factors, ſervants or aſſigns, to ſue, labour and travel for and about the defence, ſafe-guard and recovery of the ſaid goods and merchandizes, or any part thereof, without prejudice to that inſurance, to the charges whereof they the aſſurers would contribute each one according to the rate and quantity of his ſum therein aſſured; and it was agreed by them the aſſurers, that that writing or policy of inſurance ſhould be of as much force and effect as the ſureſt writing or policy of inſurance thentofore made in *Lombard-ſtreet*, or in the *Royal Exchange*, or elſewhere in *London*, and ſo they the aſſurers were contented, and did thereby promiſe, and bind themſelves each one for his own part, their heirs, executors, and goods, to the aſſured, their executors, adminiſtrators and aſſigns, for the due performance of the premiſſes, confeſſing themſelves paid the conſideration due to them for that aſſurance by the aſſured, at and after the rate of 3*l.* 10*s.* *per cent.* and in caſe of loſs (which God forbid) the aſſured to abate 10*l.* *per cent.* In witneſs whereof they the aſſurers have ſubſcribed their names and ſums aſſured in *London*, as by the ſaid writing more fully appears; of which ſaid writing the ſaid *J.* afterwards,

afterwards, *to wit*, on the ſaid 17th day of *October* in the ſaid year of our Lord 1734, at *London* aforeſaid, in the pariſh and ward aforeſaid had notice, and thereupon the ſaid *J.* afterwards, *to wit*, on the day and year laſt mentioned at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *R.* at the ſpecial inſtance and requeſt of the ſaid *J.* had then and there paid to the ſaid *J.* the ſum of 3*l.* 10*s.* of lawful money of *Great Britain* (being the reward of the aſſurance of 100*l.*) and had promiſed to perform all things in the ſaid writing contained on the part of the aſſured, to be performed for the aſſurance of 100*l.* to be made by the ſaid *J.* according to the tenor of the ſaid writing, he the ſaid *J.* took upon himſelf, and then and there faithfully promiſed to the ſaid *R.* to become the aſſurer of the ſaid *R.* for 100*l.* to perform all and ſingular the things in the ſaid writing contained to be performed on the part of the aſſurer, according to the true intent and meaning of the ſaid writing (the ſaid ſum of 100*l.* being the ſum ſubſcribed by the ſaid *J.* to the ſaid writing.) And the ſaid *R.* in fact ſaith, that the ſaid ſhip at the time of the making of the ſaid writing, *to wit*, the ſaid 17th day of *October* in the year 1734, was in ſafety, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; and being ſo in ſafety afterwards, *to wit*, on the day and in the year laſt mentioned, the ſaid ſhip laſt mentioned departed and ſailed from *London* aforeſaid, in the pariſh and ward aforeſaid, with

with the ſaid goods and merchandizes loaded thereon, to ſail to *Rotterdam* aforeſaid, and from thence to *Gambia* and *Cape Coaſt* aforeſaid in her ſaid voyage; and the ſaid *R.* further ſaith, that the ſaid ſhip in her ſaid voyage from *Rotterdam* aforeſaid, before her arrival at *Cape Coaſt* aforeſaid, *to wit*, the 29th day of *March* which was in the year of our Lord 1735, in ſailing in her ſaid voyage with goods and merchandizes loaded, and then on board her, to the value of 700 *l.* of lawful money of *Great Britain*, upon the high ſeas was burnt and deſtroyed by fire, and the ſaid ſhip and all the ſaid goods and merchandizes were thereby then totally loſt and deſtroyed, whereof the ſaid *J.* afterwards, on the firſt day of *October* in the ſaid year 1735, at *London* aforeſaid, in the pariſh and ward aforeſaid had notice, and the ſaid *R.* then and there requeſted the ſaid *J.* to pay to him the ſaid *R.* 90 *l.* parcel of the ſaid 100 *l.* aſſured by him the ſaid *J.* as aforeſaid (deducting 10 *l.* the reſidue thereof) in reſpect of the ſaid loſs which the aforeſaid *J.* ought to have paid to the ſaid *R.* according to the ſaid agreement; *Yet* the ſaid *J.* not regarding his ſaid promiſe and undertaking, but contriving, and fraudulently intending to deceive and defraud the ſaid *R.* in this behalf, he the ſaid *J.* (though often requeſted ſo to do) hath not paid to the ſaid *R.* the ſaid 90 *l.* or any part thereof, nor hath in any kind contented him for the ſame, but hath altogether refuſed, and yet refuſeth to pay to the ſaid *R.* the ſaid 90 *l.*

or any part thereof, or in any manner to content him for the ſame.

A count for money had and received, damages 100 *l.*

Declaration on Aſſumpſit *to deliver goods according to agreement, earneſt being given.*

London, *to wit*, *J. P.* late of *Weſtminſter* in the county of *Middleſex*, chymiſt, was attached to anſwer unto *N. G.* in a plea, *&c.* That whereas the ſaid *J.* on the 29th day of *October* in the year of our Lord 1734, at *London*, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, had bargained and ſold to the ſaid *N.* 100 lb. weight of fine *Turkey Rhubarb*, at the rate of 23 *s. per* pound, amounting in the whole, according to that rate or price, to the ſum of 115 *l.* the ſaid *J.* the ſaid 29th day of *October* at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration of 1 *s.* of good and lawful money of *Great Britain* to him the ſaid *J.* by the ſaid *N.* then and there in hand paid in part of payment, and of the ſum of 114 *l.* 19 *s.* to the ſaid *J.* by the ſaid *N.* to be paid on the delivery of the ſaid 100 lb. weight of fine *Turkey Rhubarb*, he the ſaid *J.* did then and there undertake, and to the ſaid *N.* then and there faithfully promiſe to deliver the ſaid 100 lb. weight of the ſaid fine *Turkey Rhubarb* upon the 30th day of the ſaid month of *October* abovementioned, at three of the clock in the afternoon of the ſame day at Mr. *B.*'s coffee-houſe; *Yet* the ſaid *J.* not regarding his ſaid promiſe and undertaking made as aforeſaid, but contriving and fraudulently intending craftily

craftily and ſubtilly to deceive and defraud the ſaid *N.* in this behalf, the ſaid 100 lb. weight of fine *Turkey Rhubarb*, or any part thereof, to the ſaid *N.* hath not delivered (although he the ſaid *N.* was *always* prepared and ready upon the delivery of the ſaid 100 lb. weight of fine *Turkey Rhubarb* in manner aforeſaid, then and there to have paid the ſaid *J.* the ſaid 114 *l.* 19 *s.* which together with the ſaid 1 *s.* paid by the ſaid *N.* to the ſaid *J.* as aforeſaid amount to 115 *l.* (that is to ſay) 23 *s.* for every pound weight of the ſaid 100 lb. weight of the ſaid fine *Turkey Rhubarb*, according to the agreement aforeſaid) but the ſaid *J.* hath hitherto neglected and refuſed, and ſtill doth neglect and refuſe to deliver to the ſaid *N.* the ſaid 100 lb. weight of fine *Turkey Rhubarb*.

Count for money had and received.

Declaration on Aſſumpſit *to pay for a gelding let to a third perſon if he did not return it.* 2 R. Raym. 1085.

London, *ſſ. J. P.* late, *&c.* was attached to anſwer unto *W. C.* in a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *W.* by *R. B.* his attorney complains, that whereas on the —— day of ——— in the year of our Lord 1734, at *London* aforeſaid, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, in conſideration that the ſaid *W.* at the ſpecial inſtance and requeſt of the ſaid *J.* would let to hire, and deliver unto a certain perſon then and yet unknown to the ſaid *W.* a certain gelding of the ſaid *W.* to ride from *London* aforeſaid to *Highgate* in the county of *Middleſex*, and ſo back again to *London* aforeſaid, he the ſaid *J.* undertook, and then and there

there faithfully promiſed the ſaid *W.* to pay him 5*l.* 5*s.* if that perſon did not return the ſaid gelding to the ſaid *W.* the ſame day; and the ſaid *W.* doth aver, that he, confiding in the aforeſaid promiſe of the ſaid *J.* afterwards, *to wit*, the ſame day and year aboveſaid at *London* aforeſaid, in the pariſh and ward aforeſaid, at the ſaid requeſt of the ſaid *J.* did let to hire, and deliver unto the ſaid perſon ſo unknown to the ſaid *W.* the ſaid gelding of the ſaid *W.* to ride from *London* aforeſaid to *Highgate* aforeſaid, and ſo back again to *London* aforeſaid; and that the ſaid perſon ſo unknown to the ſaid *W.* did not the ſame day, or at any time afterwards, return the ſaid gelding to the ſaid *W.* whereof the ſaid *J.* had notice, and therefore the ſaid *J.* according to his aforeſaid promiſe and undertaking, ought to have paid unto the aforeſaid *W.* the ſaid ſum of 5*l.* 5*s.* *Yet* the ſaid *J.* not regarding his aforeſaid promiſe and undertaking, *&c.*

Trover by aſſignees of commiſſioners of bankruptcy.

Wilts, *to wit*, *E. D.* late, *&c.* and *R. M.* late, *&c.* were attached to anſwer *J. G.* and *R. P.* aſſignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the ſtatutes made concerning bankrupts, of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* and *R.* by *S. S.* their attorney complain, that they the ſaid *J.* and *R.* on the —— day of —— in the year of our Lord —— at *Bradford* in the ſaid county of *Wilts*, were poſſeſſed of 30 broad cloths of the value of 600 *l.* as of their own

own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt) and being thereof so possessed, they the said *J.* and *R.* the said 30 broad cloths out of their hands and possession casually lost and mislaid; which said 30 broad cloths afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, came to the hands and possession of them the aforesaid *E.* and *R.* by finding; and though the aforesaid *E.* and *R.* knew the aforesaid cloths to be the proper goods and chattels of the aforesaid *J.* and *R.* and to them as assignees of the debts, goods and chattels of the said *S. L.* the bankrupt, of right to belong and appertain: *Yet* they the aforesaid *E.* and *R.* contriving and fraudulently intending the aforesaid *J.* and *R.* of the aforesaid cloths, to deceive and defraud, have not, nor hath either of them delivered the aforesaid cloths, or any of them to the aforesaid *J.* and *R.* although they have by them been often requested to deliver the same; but they the aforesaid *E.* and *R.* afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid *J.* and *R.* 600 *l.* And thereof they bring suit, *&c.*

Declaration at the suit of an infant by his Prochein amy against a sheriff for a false return, where-

Middlesex, *to wit*, *R. W.* late of *Westminster* in the county aforesaid, esq; and *D. L.* late of the same, esq; late sheriff of the county of *Middlesex*, were attached to answer unto *J. H.* of a plea of trespass on the case, *&c.*

by the plaintiff was taken on an attachment for a reſcous.

&c. and whereupon the ſaid *J. H.* by *J. H.* who is admitted by his majeſty's court here to proſecute for the ſaid *J. H.* who is within the age of 21 years, as the next friend of the ſaid *J. H.* complaineth, that whereas on the 23d day of *January* in the term of St. *Hilary* in the ſeventh year of the reign of his preſent majeſty, a writ of his ſaid majeſty iſſued out of his ſaid majeſty's court of common bench here, *to wit*, at *Weſtminſter* in the ſaid county, directed to the then ſheriff of *Middleſex*; by which ſaid writ the ſaid ſheriff was commanded, that he ſhould take *J. H.* then late of *St. Giles*'s in the ſaid county, ſcavenger, and *J. D.* if they ſhould be found in his bailiwic, and them ſafely keep, ſo that the ſaid ſheriff might have their bodies before the juſtices of his ſaid majeſty here, *to wit*, at *Weſtminſter* aforeſaid, from the day of *Eaſter* in 15 days then next following, to anſwer *T. B.* in a plea of treſpaſs; and alſo that the ſaid *J.* might anſwer the ſaid *T.* according to the cuſtom of the ſaid court of Common Bench here, of a certain plea of treſpaſs on the caſe upon promiſe, to the damage of him the ſaid *T.* 20*l.* and that the ſaid ſheriff ſhould then have there the ſaid writ; which ſaid writ afterwards, and before the return thereof, *to wit*, on the 9th day of *February* in the 7th year aforeſaid, at *Weſtminſter* aforeſaid, was delivered to the ſaid *R. W.* and *D. L.* then, and until and after the return of the ſaid writ, being ſheriff of the ſaid county, to be executed in due form of law; *Yet* the ſaid *R. W.* and *D. L.* then, and

until and after the return of the ſaid writ, being ſheriffs as aforeſaid, not regarding the duty of the ſaid office of ſheriff of the ſaid county, but contriving and fraudulently intending to injure and oppreſs the ſaid *J.* in this particular, afterwards, *to wit*, at the return of the ſaid writ, did falſly, and in deceit of the ſaid court here return to and upon the ſaid writ to the juſtices of his ſaid majeſty here, *to wit*, at *Weſtminſter* aforeſaid, that by virtue of his ſaid writ to him directed, he made his warrant directed to *S. L. J. D.* and *R. R.* his bailiffs of the hundred of *Oſſulſton*, jointly and ſeparately to take and arreſt the ſaid *J. H.* in the ſaid writ named, by virtue of which ſaid warrant the aforeſaid *S. L.* afterwards, and before the return of the ſaid writ, *to wit*, on the 1ſt day of *April* in the 7th year aforeſaid, at the pariſh of *St. Giles's in the Fields* in the ſaid county, within the ſaid hundred of *Oſſulſton* in the ſaid ſheriff's bailiwic, did take and arreſt the ſaid *J. H.* according to the command of the ſaid writ, and then and there kept him in ſafe cuſtody, until *E. H.* wife of the ſaid *J. H.* and the ſaid *J.* by the name of *J. H. &c.* and divers other perſons unknown to the ſaid then ſheriff, and to the ſaid *S. L.* at the pariſh of *St. Giles* aforeſaid, with force and arms in and upon the ſaid *S. L.* the ſaid then ſheriff's bailiff aforeſaid, made an aſſault, and beat, wounded and ill-treated him, and then and there reſcued, and each and every of them did then and there reſcue the ſaid *J. H.* out of the cuſtody of the ſaid *S. L.* the

ſaid then ſheriff's bailiff aforeſaid, againſt the ſaid then ſheriff's will, and againſt the will and without the conſent of the ſaid *S. L.* and him the ſaid *J. H.* did permit to go at large where he pleaſed; and the ſaid *J. H.* did then and there, with force and arms, reſcue himſelf, and eſcaped out of the cuſtody of the ſaid *S. L.* the ſaid then ſheriff's ſaid bailiff, againſt the ſaid then ſheriff's will, and without the conſent of the ſaid *S. L.* againſt the peace of the ſaid lord the king; and afterwards and before the return of the ſaid writ, the ſaid *J. H.* was not found in the ſaid then ſheriff's bailiwic, and therefore the ſaid then ſheriff could not have the body of the ſaid *J. H.* before his ſaid majeſty's juſtices at the day and place in the ſaid writ mentioned, as by the ſaid writ the ſaid then ſheriff was commanded; under pretence of which falſe return of the ſaid writ, afterwards, *to wit*, on the 23d day of *October* in *Michaelmas* term in the 8th year of the reign of his ſaid majeſty, a writ of his ſaid majeſty iſſued out of his ſaid majeſty's court of common bench here, *to wit*, at *Weſtminſter* aforeſaid, according to the courſe and uſage of the ſaid court, directed to the now ſheriff of the ſaid county of *Middleſex*; by which writ the ſaid now ſheriff was commanded, that he ſhould not omit becauſe of any liberty in his ſaid county, but that he ſhould take the ſaid *E.* the ſaid wife of the ſaid *J. H.* and the ſaid *J.* if they were to be found in the bailiwic of the ſaid now ſheriff, and ſafely keep them, ſo that the ſaid now

ſheriff

ſheriff might have their bodies before his ſaid majeſty's juſtices here, *to wit*, at *Weſtminſter* aforeſaid, from the day of St. *Martin* in 15 days then next following, to anſwer to his ſaid majeſty of certain treſpaſſes, reſcues and contempts, certified by the ſaid *R. W.* and *D. L.* late ſheriff of the county of *Middleſex* aforeſaid to his ſaid majeſty's juſtices at *W.* aforeſaid, from the day of *Eaſter* in 15 days then laſt paſt, by virtue of which the ſaid *J.* afterwards, and before the return of that writ, *to wit*, on the 11th day of *November* in the 8th year of the reign of his ſaid majeſty, at the ſaid pariſh of *St. Giles's in the fields* in the county aforeſaid, was attached, taken and impriſoned by *M P.* and *J. S.* the ſaid now ſheriff of the ſaid county of *Middleſex*, and kept in priſon by them there for a long time, *to wit*, from thenceforth, until the ſpace of 33 hours then next following; and the ſaid *J.* by reaſon of the premiſſes, was obliged to appear in the ſaid court here, *to wit*, at *Weſtminſter* aforeſaid, at the return of the ſaid writ, to anſwer to his ſaid majeſty for the ſaid treſpaſſes, reſcues and contempts as aforeſaid returned, according to the exigence of the ſaid writ laſt above mentioned, and thereupon he the ſaid *J. H.* with one *R. J.* and *W. L.* afterwards, *to wit*, on the 22d day of *November* in the term of St. *Michael* in the ſaid 8th year of the reign of his ſaid majeſty, in his ſaid majeſty's court here, entered into a recognizance in the ſaid court here, for the perſonal appearance of the ſaid *J. H.* from the day of St. *Martin* in 15 days

then next following, to anſwer all ſuch matters as ſhould be then and there objected againſt the ſaid *J. H.* and eſpecially for his contempt on the reſcous of the ſaid *J. H.* returned by the ſaid *R. W.* and *D. L.* the ſaid late ſheriff of *Middleſex* aforeſaid, and ſo from day to day till the ſaid *J. H.* ſhould be diſcharged by the ſaid court, and not depart the ſaid court without leave of the ſame court; whereas the ſaid *J. H.* in fact ſaith, that he is in no wiſe guilty of the ſaid ſuppoſed reſcous and contempt lately returned againſt him as aforeſaid, by reaſon of which falſe return of the ſaid writ above-mentioned ſo made by the ſaid *R. W.* and *D. L.* then ſheriff as aforeſaid, the ſaid *J. H.* not only bore and ſuſtained a long impriſonment as aforeſaid, but he hath been put unto divers great coſts and expences, amounting in the whole to a great ſum, *to wit*, to the ſum of 40 *l.* to the damage of the ſaid *J. H.* 90 *l.* Thereof he bringeth, ſuit, *&c.*

Declaration in caſe for unſkilfully managing a ſhip, whereby ſhe ran againſt a lighter and damaged plt.'s goods therein.

London, *to wit*, *H. G.* late, *&c.* mariner, was attached to anſwer to *T. H.* in a plea of treſpaſs upon the caſe, and whereupon the ſaid *T.* by *G. N.* his attorney complaineth, that whereas the ſaid *T.* on the 28th day of *December* in the year of our Lord 1735, at *London* aforeſaid, was poſſeſſed of divers goods and merchandizes, *to wit*, of 1000 baſkets of *Denia* raiſins, of the value of 360 *l.* then laden on board a certain lighter then being in the river *Thames*, and then moored at a certain key adjoining to the ſaid river

Thames

Thames at *London* aforeſaid; and whereas the ſaid *H.* upon the ſaid 28th day of *December* in the ſaid year of our Lord 1735, at *London* aforeſaid, was poſſeſſed of and maſter of a certain ſhip or veſſel called the *Mary*, then being in the ſaid river *Thames* near the ſaid key; yet the ſaid *H.* not being ignorant of the premiſſes, but deviſing and maliciouſly intending to hurt and injure the ſaid *T.* in this behalf, upon the ſame day and year abovementioned at *London* aforeſaid, ſo ill, unſkilfully and negligently managed, governed and directed his ſaid ſhip or veſſel, that for want of good care and management of the ſaid *H.* of his ſaid ſhip or veſſel, the ſaid ſhip or veſſel of the ſaid *H.* then and there preſſed againſt the ſaid lighter, and broke one of the ſides of the ſaid lighter, whereby the water then and there flowed into the ſaid lighter ſo laden with the ſaid raiſins as aforeſaid, and very much damaged and ſpoiled the ſaid raiſins ſo laden therein, whereby he ſaith he is prejudiced, and hath damage to the value of 100*l.* and thereof he bringeth ſuit, *&c.*

Declaration againſt an innkeeper for loſing a horſe of his gueſt.

Yorkſhire, *to wit*, *W. J.* innkeeper of a common inn in *Cloughton* in the county aforeſaid, was attached to anſwer *W. K.* of a plea of treſpaſs upon the caſe; whereupon the ſaid *W. K.* by *J. U.* his attorney complaineth, that whereas by the law and cuſtom of *England*, innkeepers who keep common inns to entertain travellers paſſing along the country where ſuch common inns are, and as gueſts

lodging in the ſame inns ſafely and ſecurely by night and day, are bound to keep, without any loſs or dimunition of their goods and chattels being within the ſaid inns, ſo that by default of ſuch innkeepers or of their ſervants no damage may in any wiſe happen to ſuch gueſts; and alſo whereas the ſaid *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1ſt day of *November* aforeſaid did hold and keep, and yet doth hold and keep a common inn in *C.* aforeſaid, in the county aforeſaid; and the ſaid *W. K.* the ſaid 7th day of *November* in the ſaid inn as a gueſt did lodge, the ſaid *W. K.* then and there in the ſaid inn having with him a certain mare of the ſaid *W. K.* of the price of 5*l.* yet certain miſdoers unknown to the ſaid *W. K.* the ſaid 7th day of *November* at *C.* aforeſaid in the county aforeſaid, in default of due keeping of the ſaid *W. J.* and his ſervants, the mare of the ſaid *W. K.* then and there put and placed in the ſaid inn, under the cuſtody of the ſaid *W. J.* in the ſaid inn of the ſaid *W. J.* by the ſaid *W. K.* a gueſt of the ſaid *W. K.* in the ſaid inn, took and carried away, and her detained from the ſaid *W. K.* againſt the will of the ſaid *W. K.* for a long time, *to wit*, for the ſpace of one month, and then and there did her beat, bruiſe and lame, ſo that ſhe became of no value, and other injuries to him did, to the great damage of the ſaid *W. K.* and againſt the ſaid law and cuſtom. *And alſo whereas* by the law and cuſtom of *England*, all innkeepers

keepers, who keep common inns to entertain travellers paſſing along the country where ſuch inns are, and as gueſts lodging in ſuch inns, all their goods and chattels, and all the goods and chattels being in the lawful cuſtody of ſuch gueſts, being in the ſaid inns night and day, are bound to keep without loſs or diminution, ſo that for default of ſuch inn-keepers or their ſervants no damage may in any wiſe happen to ſuch gueſts, or to the goods and chattels which are in the lawful cuſtody of ſuch gueſts within the ſaid inns; and whereas the ſaid *W. J.* on, and long before the ſeventh day of *November* in the 9th year of the reign of the lord the now king, and on the firſt day of *November* aforeſaid in the ſame year, in his ſaid inn at *C.* aforeſaid in the county aforeſaid, in his ſaid inn did lodge the ſaid *W. K.* as his gueſt, the ſaid *W. K.* then and there having in his lawful cuſtody another mare of *H. H.* then and there being the proper mare of the ſaid *H. H.* of the price of 5*l.* by the ſaid *H. H.* to the ſaid *W. K.* before that time there lent, ſafely to be redelivered to the ſaid *H. H.* yet certain miſdoers unknown to the ſaid *W. K.* the ſaid 7th day of *November* at *C.* aforeſaid in the county aforeſaid, in default of due keeping of the ſaid *W. J.* and his ſervants, the ſaid laſt mentioned mare then and there put and placed under the cuſtody of the ſaid *W. J.* in the ſaid inn of the ſaid *W. J.* by the ſaid *W. K.* a gueſt in the ſaid inn of the ſaid *W. J.* took and carried away, and her there

there detained from the ſaid *W. K.* for a long time, *to wit*, the ſpace of 11 days, and her then and there beat, bruiſed and lamed, ſo that ſhe became of no value; by reaſon whereof the ſaid *W. K.* paid the ſaid *H. H.* a great ſum of money, *to wit*, 21 *s.* in ſatisfaction of the injury done to the ſaid mare; and he the ſaid *W. J.* other injuries did to the ſaid *W. K.* to the great damage of the ſaid *W. K.* and againſt the ſaid law and cuſtom; whereupon the ſaid *W. K.* ſaith, that he is injured, and hath damage to the value of 10*l.* and thereof he bringeth ſuit, *&c.*

Declaration in treſpaſs for entering and hunting in a chaſe or warren, and killing game.

Cumberland, *to wit*, *F. T.* late, *&c.* was attached to anſwer *W. H.* in a plea wherefore he with force and arms entered into a free chaſe of the ſaid *W.* at *M.* in the county aforeſaid, and without his licence and conſent in the ſame did hunt, and did take, kill and carry away hares, conies, pheaſants and partridges; and alſo wherefore he with force and arms entered into the free warren of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent did there hunt, and take, kill and carry away other hares, conies, pheaſants and partridges, and other injuries to him did, to the great damage of the ſaid *W.* and againſt the peace of our lord the king; and whereupon the ſaid *W.* by *T. B.* his attorney complaineth, that the aforeſaid *F.* on the——day of——in the——year of the reign of his preſent majeſty, and on divers other days and times between that day and the 1ſt day of *March* in the——year of the reign

reign of his ſaid majeſty, with force and arms, *&c.* entered into the free chaſe of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent did in the ſame hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheaſants, *to wit*, 20 pheaſants, and partridges, *to wit*, 20 partridges; and alſo that the ſaid *F.* on the ſaid ſeveral days and times aforeſaid, with force and arms, *&c.* entered into the free warren of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheaſants, *to wit*, 20 other pheaſants, and partridges, *to wit*, 20 other partridges, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereupon the ſaid *W.* ſaith that he is prejudiced, and hath received damage to the value of 20 *l.* and thereof he bringeth ſuit, *&c.*

Derbyſhire, *to wit*, *W. L.* late, *&c.* was * attached to anſwer *J. T.* of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* by *W. W.* his attorney complaineth, that

---

* Declaration in caſe for detaining plt.'s apprentice. Ld. Ch. Juſt. *Raymond* ſaid, that if a man knows that an apprentice ran away from his maſter, and he keeps and employs him, the proper remedy is to bring an action for ſo much money paid to the plaintiff's apprentice in wrong of the Plaintiff. 2 *Lev.* 63. *Sel. Caſ.* 292. *Barnard. K. B.* 312.

whereas

whereas *W.* the ſon of *W. M.* of, *&c.* by his certain indenture bearing date the——day of——in the year of our Lord——at —— aforeſaid, was juſtly and lawfully retained in the ſervice of him the ſaid *J.* after the manner of an apprentice, to be inſtructed in the art of a cutler, which the aforeſaid *J.* then uſed, until the end and term of nine years from hence next enſuing and fully to be complete and ended. And the ſame *W. M.* the ſon ſerved for the ſpace of three years and upwards next after the ſaid —— day of —— in the year aforeſaid, in the ſervice of him the ſaid *J.* in his art aforeſaid as an apprentice; nevertheleſs the aforeſaid *W. L.* not ignorant of the premiſſes, but contriving craftily and ſubtilly to deceive and defraud him the ſaid *J.* of the ſervice of his ſaid apprentice, and of all profit, advantage and gain, which he the ſaid *J.* by reaſon of his apprentice aforeſaid ſhould and might have and gain, afterwards during the ſaid term of nine years, *to wit*, on the firſt day of *July* in the year of our Lord——at———aforeſaid in the ſaid county, knowing * the aforeſaid *W. M.* the ſon to be the apprentice of him the ſaid *J.* did wrongfully intice and procure him the ſaid *W. M.* the ſon to depart from the ſaid ſervice of him the ſaid *J.* which ſaid apprentice of the ſaid *J.* afterwards, *to wit*, the ſame day and year, by

---

* In an action for inticing away an apprentice, it muſt be proved, that the defendant knew he was the plaintiff's apprentice. *Sty. Caſ.* 292. *pl.* 228. *Barnard. K. B.* 312.

reaſon

reaſon of the ſaid inticements and procurements of the ſaid *W. L.* without any reaſonable or probable cauſe whatſoever left the ſervice of the ſaid *J.* his maſter, and abſented himſelf from his ſaid ſervice for a long time, *to wit*, for a month then next following, and the ſaid *W. L.* injuriouſly detained and kept him the ſaid *W. M.* the ſon from his ſervice aforeſaid during that time, againſt the will of the ſaid *J.* *to wit*, at —— aforeſaid, whereby the ſaid *J.* for all that time loſt the ſervice of his apprentice aforeſaid; *And whereas* the ſaid *W. M.* the ſon, afterwards, and during his ſaid apprenticeſhip, *to wit*, on the 2d day of *Auguſt* in the year of our Lord —— without any reaſonable cauſe or juſt pretence abſented himſelf from the ſervice of his ſaid maſter, *to wit*, at —— aforeſaid; nevertheleſs the ſaid *W. L.* well knowing the premiſſes, but contriving and intending further to injure the ſaid *J.* and to deprive him of the further uſe, ſervice and benefit of his ſaid apprentice *W. M.* the ſon, afterwards, *to wit*, on the ſaid 2d day of *Auguſt* in the year of our Lord —— aforeſaid, at —— againſt the will of the ſaid *J.* injuriouſly received the ſaid *W. M.* the apprentice into his ſervice, and detained and kept him from the ſervice of the ſaid *J.* his maſter for a long time, *to wit*, from thenceforth until the 1ſt day of *January* then next following; whereby the ſaid *J.* for all that time loſt the ſervice of his ſaid apprentice, to the damage of the ſaid *J.* of 40*l.* And thereof he bringeth ſuit, *&c.*

Here-

Declaration for taking and detaining plt.'s wife.

Herefordſhire, *to wit*, *R. S.* was attached to anſwer *W. B.* gentleman of a plea, wherefore he took *S.* the wife of the ſaid *W.* and keepeth her taken, *&c.* and whereupon the ſaid *W.* by *J. C.* his attorney complaineth, that the ſaid *R.* on the firſt day of *June* in the year of our Lord 1734, at the pariſh of *Bodenham* in the county aforeſaid, took the ſaid *S.* the wife of the ſaid *W.* and keepeth her yet taken, whereby he ſaith that he is prejudiced, and damnified to the value of 500*l.* and thereof he bringeth ſuit, *&c.*

Declaration for carrying away plaintiff's wife, goods and chattels.

Suffolk, *to wit*, *M. W.* late, *&c.* malſter, was attached to anſwer to *S. F.* gent. in a plea, wherefore with force and arms he took and carried away *T.* the wife of the ſaid *S.* together with the goods and chattels of the ſaid *S.* of the value of 500*l.* pounds at *Stowmarket* aforeſaid, and detained the ſaid *T.* the ſaid wife of the ſaid *S.* there from the ſaid *S.* a long time, whereby the ſaid *S.* loſt the aid, comfort, fellowſhip, ſervice and aſſiſtance of his ſaid wife, and detained for a long time the ſaid goods and chattels, and doth ſtill detain the ſame, and did other wrongs to the ſaid *S.* to the great damage of the ſaid *S.* and againſt the peace of his preſent majeſty, *&c.* And whereupon the ſaid *S.* by *T. K.* his attorney complaineth, that the ſaid *M.* on the 15th day of *May* in the year of our Lord 1733, at *S.* aforeſaid in the county aforeſaid, with force and arms, *&c.* took and carried away the ſaid *T.* then and now

now the wife of the ſaid *S.* together with the goods and chattels of the ſaid *S. to wit*, a gold watch, a watch-chain and picture ſet in gold, one pair of ear-rings of gold ſet with diamonds, two other gold rings, four gowns, four petticoats, one cloth cloak, one velvet hood, 20 holland ſhifts, two head-dreſſes of lace, and two other head-dreſſes of cambrick and lace, of the value of 200*l.* found at *S.* aforeſaid; and detained the ſaid *T.* the ſaid wife of the ſaid *S.* there from the ſaid *S.* a long time, *to wit*, from the ſaid 15th day of *May* in the ſaid year of our Lord 1733, until the 18th day of *October* in the year of our Lord 1735, whereby the ſaid *S.* during all that time loſt the aid, comfort, fellowſhip, ſervice and aſſiſtance of his ſaid wife; and alſo during all the time aforeſaid detained the ſaid goods and chattels, and doth ſtill detain the ſame, and did other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereby the ſaid *S.* ſaith that he is injured, and hath damage to the value of 2000*l.* and thereof he bringeth ſuit, *&c.*

Devon, *to wit*, *G. F.* late, *&c.* was attached to anſwer *E. F.* of a plea, wherefore with force and arms he made an aſſault upon *M.* the wife of the ſaid *E.* at *K.* in the ſaid county, and her the ſaid *M.* debauched, abuſed, carnally knew and got with child, whereby the ſaid *E.* for a long time loſt the comfort and affection, and alſo the

counſel,

counſel, aſſiſtance and ſervice of his ſaid wife in his domeſtic affairs, and did him other wrongs, to the great damage of the ſaid *E.* and againſt the peace of our lord the king, *&c.* And whereupon the ſaid *E.* by *T. W.* his attorney complaineth, that the ſaid *G.* upon the 11th day of *November*, 1732, and at diverſe other days and times between that day and the 4th day of *October* in the year of our Lord 1733, with force and arms made an aſſault upon *M.* then the wife of the ſaid *E.* at *K.* aforeſaid in the county aforeſaid, and her the ſaid *M.* then and there debauched, abuſed, carnally knew and got her with child, whereby the ſaid *E.* for all the time aforeſaid loſt the comfort and affection, and alſo the counſel and aſſiſtance, and ſervice of his ſaid wife in his domeſtic affairs, and did him other wrongs, to the great damage of the ſaid *E.* and againſt the peace, *&c.* Whereupon he ſaith he is injured, and hath damage to the value of 1000*l.* and thereof he bringeth ſuit, *&c.* *

Declaration in caſe for dilapidations in not repairing chancel, &c.

Glouceſterſhire, *to wit*, *P. L.* late, *&c.* late rector of the pariſh church of *B.* in the ſaid county of *G.* was attached to anſwer to *W. A.* clerk, now rector of that church, in a plea of treſpaſs on the caſe, *&c.* and where upon the ſaid *W. A.* by *T. M.* his attorney complaineth, that whereas all and ſingular rectors of churches within that part of his

* See more precedents in ſecond volume.

majeſty's

majeſty's kingdom of *Great Britain* called *England*, for the time being, ought by law well and ſufficiently to repair, ſupport and ſuſtain the chancels of their churches, and the walls and fences of their church-yards, and all and ſingular the houſes, edifices, buildings and ſtructures of and belonging to their rectories, and the walls and fences of their glebe lands thereof, and relinquiſh, yield up and leave the ſame without any dilapidations, or want of reparation whatſoever, to their ſucceſſors, rectors of ſuch churches; and in default thereof are bound and ought to pay and ſatisfy their ſucceſſors the full and true value of ſuch dilapidations and want of reparations. *And whereas* the ſaid *P.* was heretofore lawfully inſtituted, and inducted into the ſaid rectory and pariſh church of *B.* and on the firſt day of *November* in the year of our Lord 1733, was the lawful rector thereof, and in right of the ſaid rectory was ſeiſed of a manſion-houſe, called the parſonage-houſe in the ſaid pariſh of *B.* with the barns, ſtables, out-houſes, edifices, buildings, yards, courts, gardens and appurtenances thereunto belonging, and alſo of ſeveral pieces or parcels of glebe land parcel of the ſaid rectory, and ſo continued until ſuch time as herein after is mentioned, and afterwards, *to wit*, on the 25th day of the ſaid month of *November* in the ſaid year of our Lord 1733, freely reſigned the ſaid rectory and pariſh church into the hands of *E.* late lord biſhop of *G.* deceaſed, then or-

dinary of that place, and thereupon the ſaid church being vacant by means of ſuch reſignation; and the ſaid *W. A.* afterwards, *to wit*, the 18th day of *December* in the year aforeſaid, was upon ſuch vacancy duly preſented to the ſaid church, and admitted, inſtituted and inducted into the ſame, and became, and hath continued, and now is the lawful rector of the ſaid church, and the next ſucceſſor of the ſaid *P.* and the ſaid *W. A.* in fact ſaith, that at the ſaid time of the reſignation of the ſaid rectory and pariſh church by the ſaid *P.* the chancel of the ſaid pariſh church, and the walls and fences of the church-yards thereof, and the ſaid manſion or dwelling-houſe called the parſonage-houſe, part of and belonging to the ſaid rectory, the brew-houſe thereto adjoining, the barn, the ſtables, the coach-houſe, cart-houſe, the granary, the neceſſary-houſe, the chicken-houſe, and other out-houſes, edifices and buildings belonging to the ſaid manſion-houſe, the mound-walls round the garden and courts likewiſe belonging to the ſame houſe, the ſtone ſteps in the ſaid garden and the rails on each ſide of ſuch ſteps, and alſo the walls and fences of the glebe lands, part alſo of the ſaid rectory, were very ruinous, and greatly dilapidated, and in decay for want of repairs, and were ſo left by the ſaid *P.* when he reſigned the ſaid rectory and church as aforeſaid, *to wit*, on the 25th day of *November* in the ſaid year of our Lord 1733. And the ſaid *W. A.* further ſaith, that the ſum of money neceſſary

to

to be expended and laid out for the neceſſary repairs of the ſaid premiſſes amounteth to, and at the time of the ſaid reſignation of the ſaid rectory and pariſh church by the ſaid *P.* amounted to 200*l.* of lawful money of *Great-Britain*, of which the ſaid *P.* afterwards, *to wit*, on the 20th day of the ſaid month of *December* in the ſaid year 1733, at *B.* aforeſaid, had notice: *Nevertheleſs* the ſaid *P.* intending to defraud the ſaid *W.* in this behalf, the ſaid ſum of 200*l.* or any part thereof, or any other ſum of money ſufficient for the neceſſary reparation of the ſaid premiſſes, ſo left by the ſaid *P.* dilapidated, and in ſuch a ruinous condition for want of repairs as aforeſaid, to the ſaid *W.* hath not paid or ſatisfied, although the ſaid *P.* was afterwards, *to wit*, the ſaid 20th day of *December* in the year laſt above mentioned, at the ſaid pariſh of *B.* in the ſaid county of *G.* requeſted by the ſaid *W.* ſo to do; but the ſaid *P.* hath hitherto refuſed, and ſtill refuſeth to pay or ſatisfy the ſame, or any ſum of money whatſoever to the ſaid *W.* for ſuch want of repairs and dilapidations as aforeſaid, to the damage of the ſaid *W.* of 200*l.* and thereof he bringeth ſuit, *&c.*

Northamptonſhire, *to wit*, *T. K.* late, *&c.* was attached to anſwer to *R. B.* who proſecuteth in this behalf as well for the king as for himſelf in a plea, wherefore he the ſaid *T.* hath followed a plea againſt the ſaid *R.* in the ſpiritual court againſt the king's prohibition, *&c.* and whereupon the ſaid *R.* *Declaration in prohibition.*

who as well, &c. by *T. S.* his attorney complaineth, that whereas the parish of *Towcester* aforesaid is, and from the time beyond the memory of man was an ancient parish, within which parish for all that time there was and is an ancient parish church and whereas he the said *R. B.* now is, and for divers years last past was seised in his demesne as of fee of and in an ancient messuage, with the appurtenances, in the parish of *Towcester* aforesaid, now or late in the tenure or occupation of *L. R.* and he the said *R. B.* and all those whose estates he had and hath of and in the said messuage, with the appurtenances, from time beyond the memory of man have at their own costs repaired one seat or form in the said church, which seat or form hath been lately taken in and made parcel of a pew in the said church, and therefore have had and used for themselves and family inhabiting in the said messuage the sole and separate use of the said seat or form, for the hearing and attending of divine service in the said church. *And whereas* all pleas and suits of and concerning customs and prescriptions within this realm, and the cognizance of such pleas and suits, specially belong and appertain to his majesty and his royal crown, and not to the court Christian, and by the common law of the land of this kingdom of *England*, and not by the ecclesiastical laws or censures, ought to be tried, determined and discussed, and always hitherto were wont and ought: Nevertheless the said *T. K.* well knowing the premisses, but contriving

triving unjuſtly to grieve the ſaid *R. B.* and to diſherit his ſaid majeſty and his royal crown, and to bring the cognizance of a plea which ſpecially belongs to his preſent majeſty and his royal crown to another ſort of trial in the court Chriſtian before the venerable *G. R.* doctor of laws, lawfully deputed vicar general in ſpirituals, and principal official of the reverend father in Chriſt and lord *R.* by divine permiſſion biſhop of *Peterborough*, or his ſurrogate, hath impeached and controverted his ſuit, the right, title and poſſeſſion of the ſaid *R. B.* to the ſaid ſeat or form, now parcel of the ſaid pew; and although the ſaid *R. B.* hath pleaded and alledged all and ſingular the matters above by him here ſuggeſted in the ſaid court Chriſtian before the ſaid ſpiritual judge, in maintenance of his ſaid right and poſſeſſion of the ſaid ſeat or form in the ſaid pew, and offered to prove the ſame by inevitable teſtimony; *Yet* the ſaid ſpiritual judge wholly refuſed to admit the ſaid allegation and proof, and the ſaid *T. K.* endeavoureth and daily contriveth to cauſe the ſaid *R. B.* to be condemned in the premiſſes in the ſaid court Chriſtian, before the ſaid ſpiritual judge, in contempt of his ſaid preſent majeſty, and to the manifeſt damage, prejudice, impoveriſhment and grievance of the ſaid *R. B.* and againſt the common law of *England*. And although he the ſaid *R.* afterwards, *to wit*, on the 20th day of *January* in the year of our Lord 1733, at the pariſh aforeſaid, delivered to the ſaid *T. K.* the king's writ of

prohibition to the contrary thereof; Nevertheleſs the ſaid *T. K.* hath not ceaſed to follow his ſaid ſuit in the ſaid ſpiritual court, but hath ſince that time proſecuted and ſtill proſecuteth his ſaid ſuit there, notwithſtanding the ſaid writ of prohibition ſo delivered to him as aforeſaid, in contempt of his ſaid majeſty, and to the great damage and grievance of the ſaid *R.* and againſt the ſaid prohibition; whereupon the ſaid *R.* who as well, *&c.* ſaith that he is injured, and hath damage to the value of 40*l.* and thereof he as well for the king as for himſelf bringeth ſuit, *&c.*

Declaration in debt for rent reſerved by indentures, at the ſuit of the heir.

Weſtmoreland, *A. B.* late, *&c.* was ſummoned to anſwer *C. D.* ſon and heir at law of *E. D.* deceaſed, of a plea, that he render to him 14*l.* of lawful money of *Great Britain*, which he oweth to, and unjuſtly detaineth from him, *&c* and thereupon the ſaid *C.* by *W. R.* his attorney ſaith, that whereas the ſaid *E.* in his life-time, *to wit*, on the 24th day of *January* in the year of our Lord 1726, at *Kirby K.* aforeſaid, by a certain indenture then and there made between the ſaid *E.* by the name of —— (*as in the leaſe*) of the one part, and the ſaid *A.* by the name of —— (*as in the leaſe*) of the other, the other part of which indenture, ſealed with the ſeal of the ſaid *A.* the ſaid *C.* bringeth here into court, the date whereof is the ſame day and year, demiſed, leaſed, ſet, and to farm let unto the ſaid *A.* his executors, adminiſtrators and aſſigns, all his the ſaid

ſaid *E.'s* burgage houſe, meſſuage and tenement, ſituate, ſtanding and being at or near *Strickland gate end (ſo recite the parcels as in the leaſe)* to have and to hold the ſaid burgage houſe, meſſuage and tenement, barn, *&c.* and all and ſingular other the premiſſes by the ſaid indenture demiſed, with the appurtenances (except before excepted) unto the ſaid *A.* his executors, adminiſtrators and aſſigns, from the 2d day of *February* next enſuing the day of the date of the ſaid indenture, for and during and unto the full end and term of 21 years from thence next enſuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term, unto the ſaid *E.* his heirs and aſſigns, the yearly rent or ſum of 14*l.* of lawful money of *Great Britain*, at two days or times of payment in the year, that is to ſay, at *Whitſuntide* and St. *Martin* the biſhop in winter, by even and equal portions; the firſt payment to begin and be made at *Whitſuntide* then next enſuing, as by the ſaid indenture may more fully appear; by virtue of which ſaid demiſe the ſaid *A.* entered into the ſaid demiſed premiſſes with the appurtenances (except before excepted) and was poſſeſſed thereof for the term thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances, belonging to the ſaid *E.* his heirs and aſſigns; and being ſo poſſeſſed, the reverſion thereof belonging as aforeſaid to the ſaid *E.* afterwards, *to wit*, the firſt day of *April* in the year of our Lord 1733, at *K.* aforeſaid

died ſeiſed of ſuch his eſtate of and in the ſaid reverſion, at whoſe death the ſaid reverſion, with the appurtenances, deſcended to the ſaid *C.* as ſon and heir of the ſaid *E.* whereby the ſaid *E.* became, and was ſeiſed of and in the ſaid reverſion with the appurtenances; and being ſo ſeiſed, and the ſaid *A.* being ſo poſſeſſed of the ſaid demiſed premiſſes with the appurtenances, 14*l.* of the rent aforeſaid, for one year ending at the feaſt of St *Martin* the biſhop in the winter, in the year of our Lord 1734, to the ſaid *C.* from the ſaid *A.* became in arrear, and ſtill remain unpaid, whereby an action hath accrued to the ſaid *C.* to demand and have of the ſaid *A.* the ſaid 14*l.* yet the ſaid *A.* (although often requeſted) hath not yet paid the ſaid 14*l.* or any part thereof, to the ſaid *C.* but to pay the ſame to him hitherto altogether hath refuſed, and ſtill doth refuſe, to the damage of the ſaid *C.* 10*l.* and thereof he bringeth ſuit, *&c.*

Declaration in debt for rent reſerved by indenture againſt the aſſignee of the leſſee.

Middleſex, *to wit*, *J. L.* late of *Tottenham* in the county of *Middleſex*, eſq; aſſignee of *J. S.* eſq; otherwiſe lately called *J. S.* ſenior, of *London*, eſq; was ſummoned to anſwer *G. B.* eſq; in a plea, that he render to him 6*l.* 12*s.* 6*d.* which he oweth to him and unjuſtly detaineth, *&c.* and whereupon the ſaid *G.* by *E. B.* his attorney ſaith, that whereas by a certain indenture made at *Tottenham* aforeſaid, on the 17th day of *May* in the year 1716, between the ſaid *G.* by the name of *G. B.* of *Leatherhead* in the county

county of *Surrey*, eſq; of the one part, and the ſaid *J. S.* by the name of *J. S.* ſenior, of *London*, eſq; of the other part, the counterpart of which indenture ſealed with the ſeal of the ſaid *J.* the ſaid *G.* bringeth here into court, bearing date the ſame day and year, for the conſideration therein mentioned he the ſaid *G.* did demiſe, grant and to farm let unto the ſaid *J. S.* all that manſion-houſe, meſſuage, tenement, waſh-houſes, ſtables, out-houſes, yards, gardens, orchards, fiſh-pond or canal, with the appurtenances, which were then lately in the tenure or occupation of *R. C.* his under tenants or aſſigns; and which ſaid manſion-houſe and premiſſes abutted eaſtward on a field called the *Royal Field*, belonging to *T. M.* of *London*, goldſmith, weſtward on *Tottenham* high road, northward on a barn and orchard belonging to the ſaid *G. B.* in the tenure or occupation of the ſaid *W. B.* and ſouthward on a garden belonging to the ſaid *G. B.* in the tenure or occupation of the ſaid *W. B.* and alſo that little meſſuage and tenement built upon the wall belonging to the ſaid manſion-houſe, fronting alſo upon the high road of *Tottenham* aforeſaid, then alſo in the tenure or occupation of the ſaid *W. B.* his under-tenants or aſſigns, together with all ways, eaſements, watercourſes, commodities and appurtenances whatſoever to the ſaid manſion-houſe, meſſuages or tenements belonging or in any wiſe appertaining; all which ſaid premiſſes are ſituate and being in the pariſh of *Tottenham High Croſs* in the county

county of *Middleſex*; to have and to hold the ſaid manſion-houſe, meſſuages or tenements, waſh-houſes, ſtables, out-houſes, yards, gardens, orchards, fiſh-pond or canal, and all other the premiſſes, with their and every of their appurtenances above by the ſaid indenture demiſed and granted unto the ſaid *J.* his executors, adminiſtrators and aſſigns, from the feaſt-day of the Annunciation of the bleſſed virgin *Mary* laſt paſt before the date of the ſaid indenture, for and during and unto the full end and term of 21 years from thence next enſuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term unto the ſaid *G.* his heirs and aſſigns, the yearly rent or ſum of 26*l.* 10*s.* of lawful money of *Great Britain*, on the four feaſt-days or terms of payment in the year moſt uſual, that is to ſay, at the feaſt of the Nativity of St. *John* the baptiſt, St. *Michael* the archangel, the birth of our Lord Chriſt, and the Annunciation of the bleſſed virgin *Mary*, by even and equal portions; the firſt payment thereof to begin and to be made upon the feaſt-day of St. *John* the baptiſt next enſuing the date of the ſaid indenture, as by the ſaid indenture more fully appeareth; by virtue of which demiſe the ſaid *J.* entered into the ſaid demiſed premiſſes with the appurtenances, and was thereof poſſeſſed; and being ſo poſſeſſed thereof, afterwards, *to wit*, on the 1ſt day of *April* in the year of our Lord 1734, all the ſaid eſtate, right, title, intereſt and term of years of the ſaid *J.* then

to

to come and unexpired, of and in the ſaid demiſed premiſſes with the appurtenances, by an aſſignment came to the ſaid *J. L.* by virtue of which aſſignment the ſaid *J. L.* entered into the ſaid demiſed premiſſes with the appurtenances, and was poſſeſſed thereof until the expiration of the ſaid term of 21 years, *to wit*, until and upon the feaſt of the Annunciation of the bleſſed virgin *Mary* in the year of our Lord 1737, and 6*l.* 12*s.* 6*d.* of the rent aforeſaid, for the laſt quarter of a year of the ſaid term on that feaſt became due and in arrear from the ſaid *J. L.* to the ſaid *G.* by reaſon of which an action accrued to the ſaid *G.* to demand and have of the ſaid *J. L.* the ſaid 6*l.* 12*s.* 6*d.* Nevertheleſs the ſaid *J. L.* (although often requeſted) hath not rendered to the ſaid *G.* the ſaid 6*l.* 12*s.* 6*d.* or any part thereof; but hath hitherto wholly denied, and ſtill doth deny to render the ſame to the ſaid *G.* whereby the ſaid *G.* ſaith that he is injured, and hath damage to the value of 40*s.* and thereof he bringeth ſuit, *&c.*

And the ſaid *J. L.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and as to the ſum of 6*l.* 12*s.* 6*d.* which the ſaid *G.* above by his ſaid declaration ſuppoſeth to have been become due and in arrear for the rent of the ſaid premiſſes from the ſaid *J. L.* to the ſaid *G.* upon the feaſt of the Annunciation of the bleſſed virgin *Mary* in the year of our Lord 1737, for the laſt quarter of a year of the ſaid term on that feaſt in the ſaid declaration mentioned, the

Plea, *Nothing in arrear.*

the ſaid *J. L* ſaith that no part thereof is due and in arrear to the ſaid *G.* as the ſaid *G.* by his ſaid declaration above ſuppoſeth; and of this he putteth himſelf upon the country, *&c.*

Decl. againſt a hundred on the ſtatute of hue and cry. Stat. of Wincheſter, 13 Edw. 1 ſt. 2. c. 1.

Staffordſhire, *to wit*, The inhabitants of the hundred of *Pirehill* in the county of *Staffford* were attached to anſwer as well to our ſovereign lord the now king as to *H. W.* who as well for the ſame lord the king as for himſelf in this behalf ſueth of a plea, wherefore whereas in a certain ſtatute made in the parliament of the ſovereign lord *Edward* I. late king of *England*, held at *Weſtminſter* in the 13th year of his reign, (amongſt other things) it is ordained, Foraſmuch as from day to day robberies, murders, burnings of houſes and theft were then more often uſed than they had been theretofore, and felons could not be attainted by the oaths of jurors, who had rather ſuffer ſtrangers to be robbed, and to paſs without pain, than to indict the offenders, great part of whom were people of the ſame country; or at leaſt if the offenders were of another country, the receivers were of places near, and they did the ſame becauſe an oath was not given unto jurors of the ſame country where ſuch felonies were done; and as to the reſtitution of damages before that time, no pain had been limited for their concealment and laches; the ſaid lord the late king, for to abate the power of felons, had eſtabliſhed a pain in that caſe, ſo that from thenceforth, for fear of the pain more

more than for fear of any oath, they ſhould not ſpare any, nor conceal any felonies. And the ſaid lord the late king did command, that cries ſhould be ſolemnly made in all counties, hundreds, markets, fairs, and all other places where great reſort of people was, ſo that none ſhould excuſe himſelf by ignorance, that from thencefore every country ſhould be ſo well kept, that immediately, upon ſuch robberies and felonies committed, freſh ſuit ſhould be made from town to town, and from country to country; likewiſe when need is required, inqueſt ſhould be made in towns by him that was lord of the town, and after in the hundred and in the franchiſe, and in the county, and ſometimes in two or three or four counties, in caſe when felonies ſhould be committed, in the marches of ſhires, ſo that the offenders might be attainted; and if the country would not anſwer for the bodies of ſuch manner of offenders, the pain ſhould be ſuch, that every country, (that is to ſay) the people dwelling in the country, ſhould be anſwerable for the robberies done, and all the damages, ſo that the whole hundred where the robberies ſhould be done, with the franchiſes, being within the precinct of the ſame hundred, ſhould be anſwerable for the robberies ſo done; and if the robbery ſhould be done in the diviſion of two hundreds, both the hundreds, and the franchiſes within them, ſhould be anſwerable; and after that the felony or robbery was done, the countries ſhould have no longer ſpace than 40 days, within which

it

it ſhould behove them to agree for the robbery or offence, or elſe that they ſhould anſwer for the bodies of the offenders, as is plainly contained in the aforeſaid ſtatute; *And for that whereas* two certain robbers to the ſaid *H. W.* unknown, on the 5th day of *May* in the 10th year of the reign of the ſaid lord the now king, in the king's high way within the hundred of *Pirehill* aforeſaid in the ſaid county of *Stafford*, to wit, at a certain place near *Weſton*, commonly called *Wodden Lane*, between *Weſton* and *Amerton* in the pariſh of *Weſton* in the ſaid county of *Stafford*, within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, with force and arms upon him the ſaid *Henry* made an aſſault, and 25 *l.* in money of lawful money of *Great Britain*, of the proper monies of him the ſaid *H. W.* and alſo a leather purſe value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the ſaid *H. W.* then and there found, of and from him the ſaid *H. W.* did feloniouſly take and rob and carry away, againſt the ſaid peace of our ſaid lord the now king; and the ſaid *H. W.* immediately after the felony and robbery aforeſaid done at *Wodden Lane* aforeſaid in the ſaid pariſh of *Weſton*, within the hundred of *Pirehill* aforeſaid in the county aforeſaid, being near the ſaid place where the ſame felony and robbery ſo as aforeſaid was committed, did make hue and cry of the aforeſaid felony and robbery upon him made, and then and there did give notice to the inhabitants of the pa-

Stat. 27 Eliz. c. 13.

riſh of *Weſton* aforeſaid of the ſame felony and robbery; and did alſo, with as much convenient ſpeed as might be after the aforeſaid robbery on him committed as aforeſaid, give notice thereof to *T. W.* then a conſtable of the ſaid pariſh of *Weſton* aforeſaid in the ſaid hundred of *Pirehill*, being near unto the place where the ſaid robbery was committed as aforeſaid, and deſcribe in the aforeſaid notice to the aforeſaid conſtable, ſo far as the nature and circumſtances of the caſe did admit, the ſaid felons, and the time and place of the aforeſaid robbery; and did alſo, within the ſpace of 20 days next after the aforeſaid robbery committed, cauſe public notice to be given thereof in the *London Gazette*, and did therein likewiſe deſcribe, ſo far as the nature and circumſtances of the ſaid caſe did admit, the ſaid felons, and the time and place of the aforeſaid robbery, together with the ſaid money, goods and effects whereof he the ſaid *H.* was robbed as aforeſaid, and afterwards did, and before the ſuing forth of the original writ of him the ſaid *H.* to wit, on the 15th of *October* in the 11th year of the reign of the ſaid lord the now king, he the ſaid *H.* went before the ſheriff of the county of *Stafford* aforeſaid, and did then before the ſaid ſheriff enter into a bond to *T. B.* and *J. G.* then being high conſtables of the hundred of *Pirehill* aforeſaid, in the penal ſum of 100*l.* with two ſufficient ſureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the ſame place, carpenter, approved by the ſaid ſheriff,

riff, with condition for ſecuring to the ſaid high conſtables the due payment of their coſts, after the ſame ſhould be taxed by the proper officer, in caſe that he the ſaid *H. W.* ſhould happen to be nonſuited, or ſhould diſcontinue his action to be brought againſt the ſaid inhabitants of the hundred of *Pirehill* aforeſaid, on account of the aforeſaid robbery; or in caſe that judgment ſhould be given againſt him the ſaid *H. W.* on demurrer, or that verdict ſhould be given againſt him therein, according to the form and directions of the ſtatute in ſuch caſe lately made and provided; and after the felony and robbery aforeſaid done, and within 20 days next before the day of the ſuing forth of the ſaid original writ of him the ſaid *H. W.* the ſaid *H. W.* before *T. W.* eſq; then one of the juſtices of our ſaid lord the now king aſſigned to keep the peace of our ſaid lord the now king, in and for the county of *Stafford* aforeſaid, then inhabiting at *Haywood* in the pariſh of *Colwick*, within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, was examined upon his corporal oath, according to the form of the ſtatute in that caſe made and provided, and the ſaid *H. W.* upon his ſaid oath before the ſaid *T. W.* then and there ſaid, that he did not know the parties who had committed the aforeſaid robbery, or either of them; and after the felony and robbery upon him made as aforeſaid, and after the ſaid public notice given of the aforeſaid robbery in the aforeſaid *London Gazette*, 40 days of the ſuing forth of the

Stat. 8 Geo. 2. c. 16.

Stat. 27 Eliz. c. 13. ſ. 11.

the ſaid original writ of the ſaid *H.* were paſt; yet the ſaid inhabitants of the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, have not hitherto made to the ſaid *H. W.* ſatisfaction for the robbery and damages aforeſaid, nor the bodies of the felons and malefactors aforeſaid, nor the bodies of either of them, have taken, nor for the bodies of them, nor for the bodies of either of them hitherto have anſwered, but the ſame felons and malefactors have permitted to eſcape, in contempt of the ſaid lord the now king, and to the great damage of him the ſaid *H. W.* and againſt the ſaid form of the ſtatute aforeſaid in the aforeſaid 13th year of the reign of the ſaid late lord king *Edward* I. in ſuch caſe made and provided; and whereupon the ſaid *H.* who as well for the ſaid lord the now king as for himſelf in this behalf ſues, by *R. D.* his attorney complaineth, that certain robbers, *to wit*, two men, to the ſame *H. W.* unknown, on the aforeſaid 5th day of *May* in the aforeſaid 10th year of the reign of the ſaid lord the now king, in the king's high way within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, *to wit*, at a certain place near *Weſton* aforeſaid, commonly called *Wodden Lane*, between *Weſton* and *Amerton* in the pariſh of *Weſton* in the ſaid county of *Stafford*, within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, with force and arms, *to wit*, with piſtols, ſwords, ſtaves and knives, in and upon him the aforeſaid *H.* did make an aſſault, and 25 *l.*

in money of lawful money of *Great Britain*, of the proper monies of him the ſaid *H. W.* and alſo a leather purſe value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the ſaid *H. W.* then and there found, of and from the ſaid *H.* did felonioufly take and rob and carry away, againſt the peace of our ſaid lord the now king, *&c.* And the ſaid *H.* immediately after the felony and robbery aforeſaid done, *to wit*, on the ſaid 5th day of *May* in the 10th year of the reign of the ſaid lord the now king aforeſaid, at *Wodden Lane* aforeſaid in the ſaid pariſh of *Weſton* within the hundred of *Pirehill* aforeſaid in the county aforeſaid, which ſaid place called *Wodden Lane* is, and then was near the ſaid place where the ſaid felony and robbery ſo as aforeſaid was committed, did make hue and cry of the felony and robbery aforeſaid upon him made, and then and there give notice to the inhabitants of the ſaid pariſh of *Weſton* of the ſame felony and robbery; and did alſo, with ſo much convenient ſpeed as might be after the aforeſaid robbery on him committed as aforeſaid, that is to ſay, on the ſaid 6th day of *May* in the 10th year aforeſaid, give notice thereof to *T. W.* then a conſtable of the ſaid pariſh of *Weſton* aforeſaid in the ſaid hundred of *Pirehill*, being near unto the place where the ſaid robbery was committed as aforeſaid; and did deſcribe in the aforeſaid notice to the aforeſaid conſtable, ſo far as the nature and circumſtances of the caſe did admit, the ſaid felons and the time and place

of the aforeſaid robbery; and did alſo, within the ſpace of 20 days next after the aforeſaid robbery committed, cauſe public notice to be given thereof in the *London Gazette*, and did therein likewiſe deſcribe, ſo far as the nature and circumſtances of the ſaid caſe did admit, the ſaid felons and the time and place of the aforeſaid robbery, together with the ſaid money, goods and effects whereof he the ſaid *H.* was robbed as aforeſaid, and afterwards, and before the ſuing forth of the original writ of him the ſaid *H. to wit*, on the 15th day of *October* in the 11th year of the reign of the ſaid lord the now king aboveſaid, he the ſaid *H.* went before the ſheriff of the county of *Stafford* aforeſaid, and did then before the ſame ſheriff enter into a bond unto *T. B.* and *J. C.* high conſtables of the hundred of *Pirehill* aforeſaid in the penal ſum of 100*l.* with two ſufficient ſureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the ſame place, carpenter, approved by the ſaid ſheriff, with the condition for ſecuring to the ſaid high conſtables the due payment of their coſts, after the ſame ſhould be taxed by the proper officer, in caſe that he the ſaid *H. W.* ſhould happen to be nonſuited, or ſhould diſcontinue his action to be brought againſt the ſaid inhabitants of the hundred of *Pirehill* aforeſaid on account of the aforeſaid robbery, or in caſe that judgment ſhould be given againſt him the ſaid *H. W.* on demurrer, or that a verdict ſhould be given againſt him therein, according to the form and di-

rection of the ſtatute in ſuch caſe lately made and provided; and after the felony and robbery aforeſaid done, and within 20 days next before the day of the ſuing forth of the original writ of him the ſaid *H. W. to wit*, on the aforeſaid 15th day of *October* in the 11th year of the reign of our ſaid lord the now king aboveſaid, he the ſaid *H. W.* before the ſaid *T. W.* eſq; then one of the juſtices of the ſaid lord the now king, aſſigned to keep the peace of the ſame lord the now king in and for the county of *Stafford* aforeſaid, then inhabiting at *Haywood* in the pariſh of *Colwick* within the hundred of *Pirebill* aforeſaid in the county of *Stafford* aforeſaid, was examined upon his corporal oath, according to the form of the ſtatute in that caſe made and provided; and the ſaid *W. H.* upon his ſaid oath then and there before the ſaid *T. W.* ſaid that he did not know the parties who had committed the aforeſaid robbery, or either of them, and after the felony and robbery upon him made as aforeſaid, and after the ſaid public notice given of the aforeſaid robbery in the aforeſaid *London Gazette*, 40 days of the day of ſuing forth of the ſaid original writ of the ſaid *H.* were paſt; *Yet* the ſaid inhabitants of the hundred of *Pirebill* aforeſaid in the county of *Stafford* aforeſaid have not hitherto made to the ſaid *H. W.* ſatisfaction for the robbery and damages aforeſaid, nor the bodies of the ſaid felons and malefactors aforeſaid, nor the bodies of either of them have taken, nor for the bodies of them, nor for the bodies of either of them

hitherto

hitherto have anſwered, but the ſame felons and malefactors have permitted to eſcape, in contempt of the ſaid lord the now king, and to the great damage of him the ſaid *H. W.* againſt the form of the ſtatute aforeſaid, in the aforeſaid 13th year of the reign of the ſaid late lord king *Edward* the firſt in ſuch caſe made and provided; whereupon the ſaid *H. W.* who as well for the ſaid lord the now king as for himſelf ſueth, ſaith that he is injured, and hath damage to the value of 40*l.* and thereof he bringeth ſuit, *&c.* Vide ſtat. 28 Geo. 2 c. 24. 46.

And the ſaid inhabitants of the hundred of *Pirebill* by *H. D.* their attorney come and defend the force and injury, when, *&c.* and ſay, that they are no wiſe guilty of the premiſſes above laid to their charge, as the ſaid *H. W.* who as well, *&c.* above complaineth againſt them: And of this they put themſelves upon the country; and the ſaid *H. W.* who as well, *&c.* doth likewiſe the ſame: And thereupon the ſame *H. W.* ſaith, that the inhabitants in the hundred of *Pirebill* aforeſaid, where the ſaid robbery was committed, are parties defendants, againſt whom the ſaid *H. W.* who as well, *&c.* above in form aforeſaid complaineth, and for that cauſe craveth the writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe to come twelve, *&c.* of the vicinity of the hundred of *Offlow* in the county aforeſaid, which ſaid hundred of *Offlow* is the next hundred in the ſame county adjacent to the aforeſaid hundred of *Pirebill*, to try the iſſue aforeſaid above in form

Plea, Not guilty.

Iſſue. Venire *of the next adjacent hundred.*

aforeſaid joined: And becauſe the ſaid inhabitants in the aforeſaid hundred of *Pirehill* do not deny this, it is granted to him; therefore the ſheriff is commanded, that he cauſe to come here in eight days of the Purification of the bleſſed virgin *Mary* twelve, *&c.* of the vicinity of the hundred of *Offlow*, by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Debt.
Qui tam *for keeping a greyhound and killing a hare not being qualified.*

Kent, *to wit*, *E. L.* late, *&c.* was ſummoned to anſwer to the poor of the ſaid pariſh of *E.* in the county aforeſaid, and to Sir *J. S.* baronet, who ſueth in this behalf as well for himſelf as for the ſaid poor of the ſaid pariſh of *E.* aforeſaid of a plea, that he render to the ſaid poor and the ſaid *J. S.* who ſueth as aforeſaid, 10 *l.* of lawful money of *Great Britain*, which he oweth to, and unjuſtly detaineth from them, *&c.* And thereupon the ſaid Sir *J.* who ſueth as aforeſaid by *H. C.* his attorney ſaith, that the ſaid *E.* on the 13th day of *March* in the year of our Lord 1736, at and in the pariſh of *E.* aforeſaid did keep a certain greyhound for the deſtruction of the game of this kingdom, he the ſaid *E.* then not being a perſon qualified by the laws of this realm to keep a greyhound for the deſtruction of the game, againſt the form of the ſtatute in ſuch caſe made and provided, whereby, and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the ſaid poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and

and have of the ſaid *E.* for his ſaid offence 5*l.* parcel of the ſaid 10*l.* and the ſaid Sir *J.* who ſueth as aforeſaid, further ſaith, that the ſaid *E.* on the 30th day of *March* in the year aforeſaid in the ſaid pariſh of *E.* in the county aforeſaid, did with a certain grey-hound kill one hare, he the ſaid *E.* then not being a perſon qualified to kill game, againſt the form of the ſtatute in ſuch caſe lately made and provided, whereby, and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the ſaid poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and have of the ſaid *E.* for his ſaid laſt mentioned offence 5*l.* reſidue of the ſaid 10*l.* Yet the ſaid *E.* (although often requeſted) hath not yet paid the ſaid 10*l.* or any part thereof, to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, or to either of them; but he to pay the ſame to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, hitherto wholly hath refuſed and ſtill doth refuſe to the ſaid Sir *J.* who ſueth as aforeſaid, his damage of 10*l.* and thereof as well for the ſaid poor as for himſelf he bringeth ſuit, *&c.*

And the ſaid *E. L.* by *R. P.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith that he doth not owe to the ſaid Sir *J.* who as well, *&c.* the ſaid ſum of 10*l.* or any part thereof, in manner and form as the ſaid Sir *J.* who as well, *&c.* above thereof complaineth againſt him: And of this he putteth himſelf upon the *Plea,* Nil debet.

country; and the ſaid Sir *J.* who ſueth as aforeſaid, doth likewiſe the ſame; therefore, *&c.*

Judgment for not entering iſſue.

And the ſaid Sir *J. S.* although ſolemnly called came not, nor hath entered his ſaid iſſue, nor hath further proſecuted his writ: Therefore he and his pledges of proſecution are thereupon amerced, *&c.* and the names of the pledges of the ſaid Sir *J.* are, *&c.* and that the ſaid *E. L.* depart without day, *&c.* It is alſo conſidered, that the ſaid *E.* do recover againſt the aforeſaid Sir *J.* his damages by reaſon of the premiſſes, to 3*l.* 16*s.* 8*d.* to the ſaid *E.* by the diſcretion of the juſtices here adjudged at his requeſt for his coſts and charges in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided.

Declaration for ſhooting a greyhound.

Leiceſterſhire, *to wit*, *H. R.* late, *&c.* was attached to anſwer *B. D.* in a plea, wherefore with force and arms a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* at *M.* aforeſaid in the county aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch, and certain young whelps, *to wit*, five young whelps of the ſaid other bitch, which died for want of the ſaid bitches to ſuckle them, *to wit*, at *M.* aforeſaid; and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* lately found at *M.* aforeſaid, of the price of 10*l.*

10*l.* he ſhot at, hit, ſtruck, ſmote and wounded, by means whereof the laſt mentioned two bitches afterwards at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the ſaid two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five other young whelps of the ſaid laſt mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid; and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſovereign lord the king that now is, *&c.* And whereupon the ſaid *B.* by *J. B.* his attorney complaineth, that the ſaid *H.* on the 15th day of *January* in the year of our Lord 1736, with force and arms, *&c.* a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* then found at *M.* aforeſaid with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch; and certain young whelps, *to wit*, five young whelps of the other of the ſaid bitches, which afterwards, *to wit*, the ſame day and year at *M.* aforeſaid died for want of the ſaid bitches to ſuckle them; and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* then found at *M.* aforeſaid of the price of 10*l.* ſhot at, hit, ſtruck, ſmote and wounded; by means whereof the laſt mentioned

tioned two bitches afterwards, *to wit*, the ſame day and year at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five young whelps of the laſt mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards, *to wit*, the ſame day and year died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſaid ſovereign lord the king that now is, whereby the ſaid *B.* ſaith that he is injured and damnified, to the value of 10*l.* and thereof he bringeth ſuit, *&c.*

Plea. Defendant juſtifies as keeper of a park.

And the aforeſaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury, when, *&c.* And as to the coming with force and arms, and the whole treſpaſs aforeſaid above ſuppoſed to be done, except the ſhooting at, and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, ſaith that he is not guilty: And of this he putteth himſelf upon the country; *First iſſue.* and the ſaid *B.* likewiſe, *&c.* And as to the ſhooting at, and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned above ſuppoſed to be done, the aforeſaid *H.* ſaith, that the ſaid *B.* ought not to have his aforeſaid action thereof againſt him, becauſe he ſaith, that Sir *W. D.* bart. long before

before the ſaid time, when, &c. and at the ſame time, when, &c. was, and ſtill is poſſeſſed of and in a certain antient park called *B.* park in *M.* aforeſaid; in which ſaid park, long before the ſaid time, when, &c. and at the ſaid time, when, &c. were great numbers of deer; of which park the aforeſaid *H.* before the ſaid time when, &c. and at the ſaid time when, &c. was keeper, and had the care and cuſtody thereof. And the ſaid Sir *W.* being ſo as aforeſaid poſſeſſed of the ſaid park, the ſaid greyhound bitch at diverſe times before the ſaid time, when, &c. was uſed to haunt the ſaid park, and to hunt, chaſe and drive the ſaid deer, in order to bite, wound and kill them, to the great hurt and damage of the ſaid deer; and at the ſame time, when, &c. was in the aforeſaid park for the purpoſe aforeſaid; whereupon the aforeſaid *H.* as keeper and ſervant of the aforeſaid Sir *W.* and by his command, at the ſaid time, when, &c. in the ſaid park, for the preſervation of the ſaid deer, there did ſhoot at, and kill the ſaid greyhound bitch there, as it was lawful for him to do, which is the ſame ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, whereof the ſaid *B.* doth above in that behalf complain againſt him: and this he is ready to verify: Whereupon he prayeth judgment, if the ſaid *B.* ought to have his aforeſaid action thereof againſt him, &c.

And the ſaid *T. K.* by *C. G.* his attorney cometh and defendeth the force and injury, when, *Plea to a prohibition.*

when, &c. and ſaith, that he did not proſecute or follow his ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R. R.* againſt the prohibition of our ſaid lord the king to him directed and delivered in manner and form as the ſaid *R.* who ſueth as well for the king as for himſelf, by his writ and declaration aforeſaid hath above ſuppoſed: And of this he putteth himſelf upon the country; and the ſaid *R.* who as well, &c. likewiſe, &c. And for the obtaining the writ of our lord the king of conſultation in this behalf, he the ſaid *T.* ſaith, that long before the proſecution of the ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R.* he the ſaid *T.* was and now is ſeiſed of a certain antient meſſuage with the appurtenances, in *Park-Lane* in *Towceſter* aforeſaid, in his demeſne as of fee, and that the ſaid pew in the ſaid church of *Towceſter* in the ſaid declaration mentioned, was and is an antient pew, without the addition of any ſeat or form in the ſaid church within the memory of man taken in or made parcel of the ſaid pew; and that he the ſaid *T.* and all thoſe whoſe eſtate he hath in the ſaid meſſuage with the appurtenances, and their tenants thereof, from the time whereof the memory of man is not to the contrary, have and hath ſuſtained, amended and repaired the ſaid pew as often as need required, at his and their own proper coſts, and by reaſon thereof from the time aforeſaid he and they, and ſuch other perſon and perſons as he and they hath and have from time to time licenſed to ſit therein,

Firſt iſſue.

in, hath and have uſed and been accuſtomed to ſit therein to hear divine ſervice and preaching the word of God in the ſaid church as in a pew belonging to the ſaid meſſuage with the appurtenances, ſo that no other perſon from the time aforeſaid in time of divine ſervice and preaching the word of God in the ſaid church, hath had any ſeat or place in the ſaid pew without the licence or againſt the will of the ſaid *T.* or of thoſe whoſe eſtate he hath in the ſaid meſſuage with the appurtenances, or of his or their tenants thereof for the time being; neither could or ought ſuch other perſon to ſit therein, otherwiſe than by ſuch licence as aforeſaid. And the ſaid *T.* ſaith, that he being ſo ſeiſed of, and dwelling in the ſaid meſſuage with the appurtenances, the ſaid *R.* who as well, *&c.* before the ſaid proſecution in the ſaid ſpiritual court, *to wit*, on the firſt day of *April* in the year of our Lord 1733, in time of divine ſervice in the ſaid church, without the licence and againſt the will of the ſaid *T.* did intrude himſelf into the ſaid pew, and diſturbed him the ſaid *T.* and his family and friends then and there being by and with the licence of him the ſaid *T.* wherefore he the ſaid *T.* for remedy in that behalf, before the prohibition of our ſaid lord the king to the contrary thereof to him directed was delivered, did inſtitute his ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R.* as it was lawful for him to do; without that, that he the ſaid *R.* who as well, *&c.* and all thoſe whoſe eſtate he had and hath in the ſaid antient

tient meſſuage in the ſaid declaration mentioned to be then, or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own coſts repaired one ſeat or form in the ſaid church lately taken in, and made parcel of a pew in the ſaid church, and therefore have had and uſed, for themſelves and family inhabiting in the ſaid meſſuage, the ſole and ſeparate uſe of the ſaid ſeat or form for the hearing and attending of divine ſervice in the ſaid church in manner and form as the ſaid *R.* who as well, *&c.* by his ſaid declaration hath ſuppoſed: And this the ſaid *T.* is ready to verify, with this alſo, that the ſaid *T.* will verify, that the pew in the ſaid declaration mentioned, and the pew in the plea of him the ſaid *T.* beforementioned, is one and the ſame pew, and not different: Wherefore he prayeth judgment, and the writ of our ſaid lord the king of conſultation in this behalf to be granted unto him.

Replication in prohibition.

And the ſaid *R. R.* ſaith, that the ſaid *T. K.* ought not, for the reaſon by him alledged, to have his ſaid majeſty's writ of conſultation in this behalf, becauſe he ſaith, as before, that he the ſaid *R.* who as well, *&c.* and all thoſe whoſe eſtate he had and hath in the ſaid ancient meſſuage in the ſaid declaration mentioned to be then or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own coſts repaired

paired one ſeat or form in the ſaid church lately taken in and made parcel of a pew in the ſaid church, and therefore have had and uſed, for themſelves and family inhabiting in the ſaid meſſuage, the ſole and ſeparate uſe of the ſaid ſeat or form for the hearing and attending of divine ſervice in the ſaid church, in manner and form as the ſaid *R.* who as well, *&c.* by his ſaid declaration hath alledged: And this he prayeth may be inquired of by the country; and the ſaid *F. K.* doth the ſame: Therefore as well to try the ſaid iſſue, as the aforeſaid other iſſue between the ſaid parties above joined, the ſheriff is commanded, *&c. Vide antea fol.*

Plea to a bond that it was given for money won at play.

And the ſaid *H.* by *G. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and prayeth the hearing of the ſaid writing obligatory, and it is read to him in theſe words, *to wit*, Know all men, *&c.* [*the obligation*] and he prays alſo the hearing of the condition of the ſaid writing obligatory, and it is read to him in theſe words, *to wit*, [*here enter the condition*] which being read and heard, he the ſaid *H.* ſaith, that he by virtue of the ſaid writing obligatory ought not to be charged with the ſaid debt, becauſe he ſaith, that after the 29th day of *September* in the year of our Lord 1664, and before the making the ſaid writing obligatory, *to wit*, on the ſaid firſt day of *July* in the ſaid year of our Lord 1733, at *Weſtminſter* aforeſaid, he the ſaid *H.* played with the ſaid *S.* at a certain play with dice called *Hazard*, for diverſe ſums of money

Stat. 16 Car. 2. c. 7.

ney exceeding the ſum of 100*l.* upon tick and credit, and not for ready money; and that he the ſaid *H.* ſo playing with the ſaid *S.* at the ſaid play, then and there at one and the ſame time and meeting loſt upon credit to and with the ſaid *S.* in the whole a great ſum of money, exceeding the ſum of 100*l.* *to wit*, the ſum of 500*l.* whereof no part was then paid by the ſaid *H.* And the ſaid *H.* afterwards thereupon, *to wit*, on the ſaid firſt day of *July* in the year of our Lord 1733, aforeſaid at *Weſtminſter* aforeſaid, made and delivered the aforeſaid writing obligatory with the aforeſaid condition thereto ſubſcribed for the ſecuring the payment of the ſaid 500*l.* by him the ſaid *H.* ſo loſt; and by the ſaid *S.* ſo as aforeſaid at the ſaid play won of the ſaid *H.* at one and the ſame time and meeting, upon credit; whereby by force of the ſtatute in ſuch caſe made and provided the ſaid writing obligatory wholly became and is void, and of no effect in law: And this he is ready to verify: Wherefore he prayeth judgment, whether he ought to be charged with the ſaid debt by virtue of the ſaid writing obligatory, *&c.*

Replication. And the ſaid *S.* ſaith, that by reaſon of any thing above by the ſaid *H.* in pleading alledged, he ought not to be barred from having his ſaid action againſt him, becauſe he ſaith, that the ſaid bond was not given for ſecuring the payment of money won at the ſaid play by the ſaid *S.* of the ſaid *H.* as the ſaid *H.* hath above pleaded: And this he prayeth may be inquired of by the country;

try; and the ſaid *H.* likewiſe; therefore, *&c.*

And the ſaid *N.* and *I.* by *J. H.* their attorney come and defend the force and injury, when, *&c.* and ſay, that they did not undertake in manner and form as the ſaid *J.* above complaineth againſt them: And of this they put themſelves upon the country; and the ſaid *J.* likewiſe: And the ſaid *M.* by *H. K.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the aforeſaid action of the aforeſaid *J.* whereby the ſaid *J.* remaineth undefended by the ſaid *M.* by reaſon whereof the ſaid *J.* ought to recover againſt the ſaid *M.* his damages, occaſioned by the non-performance of his ſaid promiſes and undertakings; but becauſe it is not known whether or no the ſaid *N.* and *I.* will be convicted of the premiſſes; and if they ſhall be convicted, it is convenient and neceſſary that there ſhould be only *one taxation* of damages for the whole premiſſes in one writ ſpecified; and thoſe damages ought to be ſettled by a jury of the country in that behalf; and that the writ of inquiry of damages aforeſaid againſt the ſaid *M.* be ſtayed, until the ſaid iſſue as aforeſaid between the ſaid *J.* and the ſaid *N.* and *I.* ſhall be determined; therefore, as well to try the iſſue between the ſaid *J.* and the ſaid *N.* and *I.* above joined, as alſo to inquire what damages the ſaid *J.* hath ſuſtained by occaſion of the premiſſes aforeſaid, the ſheriff is commanded

Award of Venire, *and writ of inquiry, where two defendants appear and one lets judgment go by default.*

that he cauſe to come here 12 free and lawful men of the body of his county, *&c.* by whom, *&c.* and who are not related to the ſaid *N. I.* or *M.* or the ſaid *J.* to recognize, *&c.* becauſe as well, *&c.*

Eaſter *Term*, &c.

Middleſex, *to wit.* *R. S.* of, *&c.* was attached to anſwer *R. T.* and *P. L.* in a plea of treſpaſs upon the caſe, to their damage of 43 *l.* *Roll* 1022.

Afterwards, *to wit*, the 25th day of *July* in the 13th year of the reign of our lord the king that now is, the aforeſaid *R. T.* and *P. L.* come by *H. P.* their attorney conſtituted by a ſpecial warrant to him in that behalf, before Sir *W. D.* knt. ch. juſt. of our ſaid ſovereign lord the king of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, and acknowledged that they were ſatisfied of the aforeſaid damages: Therefore let the ſaid *R. S.* be diſcharged of thoſe damages.

Acknowledged the 25th day of July 1777, *at* Serjeants Inn, *before me*

W. D.

Of

Of ſuing out, entring, and returning Proceſs on the Roll, in order to ſave the Statute of Limitations, 21 *Jac.* 1. *chap.* 16.

THE attorney muſt make out *Precipe* (*a*) for (*b*) original, according to nature of action; and carry ſame to filacer (*c*) of that county, wherein the *Venue* is laid; who will procure original, which is carried to the ſheriff's office, in order to be returned

---

(*a*) The Form of Precipe for original.

Middleſex, (ſſ) If *James Marriot* ſhall make you ſecure, in proſecuting his claim, then put by gages and ſafe pledges, *Charles Agate* late of *Paddington* in the ſaid county, ſhopkeeper, &c. of a plea that whereas (as *in declaration* by original to end thereof.)

Returnable, &c.

J. R.
May 17, 1778.

(*b*) Form of ſpecial original.

George the third, *&c.* To the ſheriff of *Middleſex* greeting. If *James Marriot* ſhall make you ſecure in proſecuting his claim, then put by gages and pledges, &c. *Charles Agate* late of *Paddington* in your county, ſhop-keeper (as in *Precipe* and declaration to end of them) and have there the names of the pledges and this writ; witneſs ourſelf at *Weſtminſter*, *&c.*

(*c*) Pay filacer for original, ſame as in common caſes, and for filing return four-pence.

Non (*d*) *inventus*, this return is filed with the filacer.

If plaintiff is an attorney and ſues as ſuch, he makes out his attachment of privilege, in the uſual (*e*) manner.

Attachment of privilege is in nature of an original writ, and when replied to, in order to ſave the ſtatute, it is ſufficient to ſhew the *Teſte* thereof, without continuances to time of declaration. *Wilſ. Rep. B. R.* 167. in error.

Proceedings againſt Peers, Members of Parliament, and their (*f*) Servants.

Plaintiffs may proceed and proſecute their ſuits againſt peers and members of parliament, notwithſtanding their meetings; and their perſons only are protected from arreſt. By *Stat.* 10 *Geo.* 3. *Chap.* 50.

All ſuits brought againſt peers or members of parliament in this court, are by bill, as againſt an attorney or officer of the court.

(*d*) Pay ſheriff returning original, or attachment *non eſt inventus*, eight-pence.

(*e*) See *ante* fol.

(*f*) Servants of peers and members of parliament, are by *ſtat.* 10 *Geo.* 3. chap. 50. *deprived* of every *privilege* they *were* intitled to from their reſpective lords and maſters; and therefore may be proſecuted and *arreſted* as *common* perſons.

Form of the BILL.

Hilary Term, 18 *Geo.* 3.

To the juſtices of our lord the king of the bench.

Middleſex, *to wit*, *JANE CHAPMAN* by *John Rayner* her attorney, complains of (*a*) *Hartwell Smythe* eſq; having privilege of parliament, in a plea of treſpaſs on the caſe, for that, *to wit*, That whereas, *&c.* [as in a common bill, according to the nature of the action to the end thereof, *viz.* bringeth (*b*) ſuit, *&c.*] *Direction of the bill.*

J. R. For the pltff. } Pledges { *John Doe.*
For the deft. } to { and
proſecute { *Rich. Roe.*

(*a*) If defendant be an *Engliſh* or *Scotiſh* peer, you deſcribe him thus: "*William* duke of *N.* knight of the moſt noble order of the garter," and inſtead of "*Hartwell*" ſay "the ſaid duke" all through the bill; omitting the words "having privilege of parliament": if defendant be an *Iriſh* peer, deſcribe him thus, "*James Conolly* eſq; commonly called the right honourable *James* earl of *W.*" and inſtead of *Hartwell*, ſay "the ſaid *James Conolly*," but the words "having privilege of parliament" are not to be omitted, becauſe the peers of *that* kingdom are conſidered only as commoners in *this*.

(*b*) See note in ſecond vol. 243.

This bill must be engrossed on a treble penny piece of parchment, and signed by one of the prothonotories, for which he demands one shilling; and then be filed in the office of that filacer, of that county, wherein the *Venue* of the action is laid; his fee, for filing same, is two shillings and fourpence; and then a writ (*c*) of summons, is to be sued out.

This writ of summons must be subscribed with the name of the filacer of that county wherein the action is laid; whom you pay for signing it eight pence every sheet; at seal office seven pence, and for warrant thereon in order to summon defendant, 2*s.* 6*d.* which is done by sheriff's officer's leaving copy thereof at his last or most usual place of abode. If defendant does not appear in time, sue out a (*d*) *distringas*.

Pay filacer of the county in which the *Venue* to the action is laid, signing *distringas* eight pence, every sheet, sealing same seven pence.

If the defendant neglects to appear at the return of the *distringas*, a return thereof must be procured from the sheriff, for which his legal demand is 2*s.* 4*d.*; upon which

---

(*c*) For the Form, see 2 vol. 244.

(*d*) For Form see 2 vol. 244, 245. An order of court, requiring the appearance of a peer or member of parliament, may be enforced by *distringas*, by *stat.* 10 *Geo.* 3. chap. 50.

another

another *diſtringas* muſt be ſued out in ſame manner as the former, and a third, if neceſſary, when the plaintiff's attorney may move (*e*) in the treaſury to encreaſe the iſſues, (*f*) which court will order to more than double the former iſſues, as appears by the following inſtances, even to the amount of the debt, though no report of ſuch increaſe be found in *Barnes*.

The practice of this court had been till *Michaelmas* term, 20 *Geo.* 2. not to encreaſe the iſſues on *alias diſtringas's* to more than double the iſſues returned from time to time, on the former *diſtringas's*; but in that term, the court obſerving that the *King's bench* and *Exchequer* had done more, ordered, in conformity to their practice, iſſues to be returned on the *Pluries diſtringas* to 20*l.* the debt ſworn to, being 152*l.* (*g*). So to the like ſum, four pounds iſſues, having been returned on the *alias diſtringas*; and the

---

(*e*) This being a common motion of courſe, no notice thereof need be given, nor is any affidavit of facts, or ſtate of proceedings neceſſary; the rule obtained of the court is to be drawn up with the ſecondary, for which you pay him five ſhillings, and ſheriff muſt be ſerved therewith; on whom call at return of *third diſtringas*, and he will pay plaintiff's attorney the amount of the debt with coſts, firſt deducting his own fees thereout, which are about 12*s.* 6*d.*

(*f*) The judges, previous to their ſitting in court *in term time*, meet in the treaſury chamber; which lies adjacent to court; where they hear thoſe and ſuch ſort of common motions of courſe.

(*g*) *Barnes* 418.

debt ſworn to being 230*l.* (*h*). So to like ſum, two pounds having been returned on the firſt *diſtringas*; and the debt ſworn to, amounting to 1950*l.* (*i*). So to the ſum of 100*l.* 20*l.* having been returned on the *Plu-ries diſtringas*; and the debt ſworn to being 290*l.* and (*k*) upwards.

If defendant appears after having caſt an (*l*) eſſoin, or after return of the firſt writ of *diſtringas*; plaintiff muſt proceed as on a bill againſt an attorney, and when he hath obtained judgment he muſt ſue out *diſtringas's* as before, till he hath recovered debt and coſts.

(*h*) *Barnes* 420.

(*i*) *Barnes* 420.

(*k*) *Barnes* 422.

(*l*) *Prat*, chief juſtice of this court ſaid, that caſting eſſoins was a very obſolete practice, and a great abuſe of the law, being an unneceſſary delay of juſtice; that if the practice was to be revived, it would be neceſſary to make a new rule of court, and that an eſſoin could not be caſt by attorney. 2 *Wilſ. Rep. C. B.* 164.

BILL of Costs on proceedings againſt Members of Parliament.

Eaſter Term, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Warrant to proceed and inſtructions	0	0	0	0	2	2	0	4	4
Drawing bill fo. 40	0	0	0	1	0	0	2	0	0
Fee to counſel to peruſe and ſettle ſame	1	1	0	1	1	0	1	1	0
Attending him thereon	0	0	0	0	1	8	0	3	4
Parchment and duty for bill	0	2	6	0	2	6	0	2	6
Ingroſſing ſame	0	0	0	0	6	8	0	13	4
Entring on the roll	0	0	0	0	6	8	0	13	4
Paid prothonotary	1	10	0	1	10	0	1	10	0
Ditto filacer for writ of ſummons	1	8	10	1	8	10	1	8	10
Parchment and duty	0	3	6	0	3	6	0	3	6
Fee thereon	0	0	0	0	1	8	0	3	4
Warrant and meſſenger	0	2	6	0	2	11	0	3	4
Service	0	0	0	0	2	6	0	5	0
Returning and filing	0	2	4	0	2	4	0	2	4
Term fee	0	0	0	0	2	6	0	5	0
Porters, letters, &c.	0	0	0	0	1	0	0	2	0

Trinity Term following.

Searching for appearance	0	0	0	0	1	8	0	3	4
Drawing decl. fo. 40	0	0	0	0	13	4	1	6	8

En-

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Engroſſing and duty	0	2	0	0	8	8	0	15	4
Rule to plead	0	1	10	0	2	2	0	2	6
Searching for and demanding plea	0	0	0	0	2	8	0	5	4
Attending ſummons for time to plead	0	0	0	0	1	8	0	3	4
Copy of order	0	0	0	0	0	6	0	1	0
Inſtructions for replication	0	0	0	0	1	8	0	3	4
Drawing ſame, fol. 3	0	0	0	0	1	0	0	2	0
Ingroſſing and duty	0	0	3	0	0	9	0	1	3
Fee to counſel to ſign	0	10	6	0	10	6	0	10	6
Attending him	0	0	0	0	1	8	0	3	4
Rule to rejoin	0	1	10	0	2	2	0	2	6
Searching for and demanding rejoinder	0	0	0	0	2	8	0	6	4
Warrant and docquet	0	1	4	0	2	0	0	2	8
Drawing interlocutory judgment, fol. 3	0	0	0	0	1	6	0	3	0
Ingroſſing proceedings on paper, and duty, fol. 43	0	1	3	0	7	11	0	15	7
Entring ſame on roll	0	0	0	0	7	2	0	14	4
Paid prothonotary	1	12	0	1	12	0	1	12	0
Writ of inquiry, parchment and duty	0	3	6	0	10	8	0	17	10
Paid ſigning and ſealing	0	7	11	0	7	11	0	7	11
Fee thereon	0	0	0	0	1	8	0	3	4
Notice of executing ſame	0	0	0	0	1	0	0	2	0
Attending execution	0	0	0	0	6	8	0	13	4
Paid ſheriff and jury	1	11	6	1	11	6	1	11	6
Stamp on inquiſition	0	5	0	0	5	0	0	5	0

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending ſtamp office	0	0	0	0	1	8	0	3	4
Notice of taxing coſts, copy and ſervice	0	0	0	0	1	0	0	2	0
Attending taxation	0	0	0	0	1	8	0	3	4
Paid prothonotary, ſigning final judgment	0	7	4	0	7	4	0	7	4
Paid clerk of judgments	0	2	0	0	2	0	0	2	0
Term fee	0	0	0	0	2	6	0	5	0
Letters and porters	0	0	0	0	1	0	0	2	0

References

References from Court.

ON cauſe being referred by the court, application muſt be made to Mr. *Thomas Lloyd* the aſſociate, at his chambers *Lincoln's Inn, New Square*, for the order of reference, you pay for the order, if one cauſe only referred, four ſhillings and ſix pence, if more, in proportion to the length.

The reſpective attornies of the parties, ſet down on a piece of paper, the names of ſuch witneſſes, as either of them intends to examine on the references, and deliver the ſame to the crier of the (*a*) court; who will immediately after trial, upon the witneſſes being brought up to the bar of the court, ſwear them, he charges two ſhillings for every witneſs ſworn to give evidence, for either party.

It is uſual for plaintiff's attorney to get (*b*)

(*a*) It is beſt for both attornies to get their reſpective witneſſes ſworn in *court*, or otherwiſe their clients muſt be at the expence of bringing them before a judge, for that purpoſe.

(*b*) Form of arbitrators appointment to ſit on reference.

" I do appoint *Thurſday* 19th day of this inſtant *February*, at eleven o'clock in the forenoon, at the ſign of the *Sun* Tavern on *Leſſon Green*, *Paddington*, in the county of *Middleſex*, kept by *William Haxell*, to ſit upon the matters above referred to me. Dated ſecond day of *February*, 1778."

James Agate.

Witneſs *J. R.* plaintiff's attorney.

appointment

appointment from arbitrator, which, when obtained, he inſerts at bottom of order of reference.

When plaintiff's attorney hath procured day of reference appointed by arbitrator, he delivers him copy of order of reference, and alſo a ſhort brief of his client's caſe, with the names of the witneſſes ſworn to give evidence thereon.

Defendant's attorney muſt be ſerved with an (*c*) exact copy of order of reference, with the arbitrator's appointment thereon.

Defendant's attorney alſo furniſhes the arbitrator with a ſhort brief of his client's caſe, with the names of the witneſſes ſworn in order to be examined for the purpoſe of ſupporting the ſame.

On day appointed for hearing the matters referred, the attornies on both ſides agree, with the concurrence of the arbitrator, how they ſhall proceed, and whether the parties themſelves ſhall or ſhall not be ſuffered to be preſent, during the inveſtigation of the diſpute, this being ſettled to mutual ſatisfaction, plaintiff's attorney opens his client's caſe, calls his witneſſes, and ſubſtantiates the ſame by their (*d*) evidence; after which the

---

(*c*) This ſhould be carefully examined with the original order and appointment, by the perſon who ſerves it, that he may be able to make an affidavit thereof, if neceſſary.

(*d*) Both attornies have a right to croſs examine the witneſſes on the other ſide.

defence

defence is entered into in like (*e*) manner, by the adverſe party's attorney.

Both attornies have a right, on ſummoning up the evidence, to reply to any matters, offered againſt the caſe made out on the evidence, for their reſpective clients.

In caſe the diſpute or matters in difference, are long and intricate, arbitrator is at liberty to adjourn (*f*) awarding the ſame, as ſuits his conveniency, to a future day; provided he makes his award in writing within the time limited by the order of reference.

If arbitrator cannot, or does not make his award in writing in time, either party, on affidavit of the reaſons thereof, may, on motion (*g*) in court procure (*h*) enlargement of time.

(*e*) The arbitrator takes minutes of the evidence given on both ſides; and generally appoints a future day for making his award.

(*f*) It is moſt prudent for arbitrator's attorney to give the attornies of both parties, notice in writing of the adjournments, in order to prevent all excuſes for not attending, or pretence for ſuſpecting any partiality in the arbitrator.

(*g*) Notice of this motion muſt be given, and affidavit of ſervice thereof, annexed to former affidavit.

(*h*) If court grants further time, rule thereof muſt be drawn up with ſecondary, for which is paid five ſhillings, ſame muſt be ſerved on arbitrator; and on his fixing a further time to arbitrate, ſame rule, with copy of his appointment muſt be ſerved on both the attornies.

Arbi-

Arbitrator's attorney draws up the *(i)* award from the minutes taken by the arbitrator; and when prepared and executed, he gives both the attornies notice of it's being ready for delivery, that each may take away his part and pay for the ſame.

If party *(k)* in whoſe favour the award is made takes his part, and the other neglects coming to receive his, it will be neceſſary for the arbitrator to tender or cauſe to be tendered, his award, to the party refuſing to accept the ſame, that, upon affidavit thereof, *(l)* order of reference may be made a rule *(m)* of court.

If order is not complied with, within the time directed by rule, an affidavit of ſervice

---

(i) The award is deciſive between the parties, unleſs it can be clearly proved to the court, that the ſame was made in direct oppoſition to evidence, or that the arbitrator acted corruptly or diſhoneſtly in any reſpect; and even then application for relief muſt be made before the order of reference is made a rule of court, elſe he will be too late. The award recites the order of reference, and then runs as awards uſually do, only obſerving the neceſſary alterations throughout, ariſing from the difference of being arbitrated by virtue of an order of court inſtead of bonds of arbitration: there muſt be two parts, each ſtamped with a *five ſhilling* impreſſion.

(k) After award made, party in whoſe favor ſame is given, takes award from Mr *Lloyd*, with *Poſtea* indorſed, in order to complete his judgment.

(l) The coſts at law are taxed by prothonotary on this order of *Niſi prius*, and he is governed thereby in his taxation.

(m) This rule is drawn up by the ſecondary, for which he is paid five ſhillings; it muſt be ſerved on the diſobedient party's attorney.

(n) there-

(*n*) thereof, court will grant an (*o*) attachment; this rule must be drawn up with secondary, for which he is paid five shillings.

If attachment is executed, court will not discharge party, till he has fully complied with award, and satisfied all costs incurred by his contempt.

Summonses.

Summonses are to be taken out before a judge of the court; pay for every of them and renewal, whether it be term time or vacation, two (*a*) shillings.

Summons, regularly (*b*) obtained, is a stay

(*n*) Which must be personal. *Barnes* 404.

(*o*) The rule for making the order an act of the court, must be taken to a clerk in court, in the crown office, who will thereupon make out the attachment, for which he charges 13*s.* and 4*d.* this is taken to the sheriff of the county in which the party to be attached, resides, who will make out a warrant for 2*s.* 6*d.*

(*a*) Summons taken out by an attorney of the court, if defendant, is seldom charged any thing.

(*b*) Judgment signed after summons for time to plead, supported by court, it appearing upon affidavit, that the same was not served till after rule to plead was out. *Barnes* 241, 242, 252, 254, 273. it is an abuse upon the judge to apply for his summons, after rule to plead expired, *Barnes* 252. for had he known the rule was out, he would not have granted the summons, the judge therefore was imposed upon. *Barnes* 254. but th' such judgment is strictly regular, yet court set it aside on payment of costs, pleading general issue, and taking shortnotice of trial; *Barnes* 254. if they consider it as quick practice. See an instance in *Barnes* 265, 266.

ſtay of proceedings, till (*a*) diſcharged, or other order made thereupon. *Barnes* 252.

True copy of all ſummonſes muſt be (*b*) ſerved on proper parties; which ſhould be examined with the originals previous to their ſervice, becauſe it may be neceſſary to make affidavit thereof.

Summons muſt be attended an hour before it can regularly be renewed, and when it is, it is marked on the ſide "*ſecond ſummons*," and ſerved and attended as before; if not attended within the hour, it muſt be renewed, marked "*third ſummons*," and ſerved; if not timely attended, upon affidavit (*c*) thereof, judge's clerk will procure you

---

(*a*) Becauſe judge is not ſuppoſed to know the ſtate of the cauſe, in which the ſummons is granted, the ſame being iſſued of courſe, on application.

(*b*) The party's attorney muſt always be ſerved, in caſe he hath one, if not, it muſt be left at his laſt or moſt uſual place of abode, unleſs *perſonal* ſervice is required.

(*c*) The form of which may be thus:

In the *Common Pleas*.

Jane Chapman,
againſt
John Rayner.

George Hazel, of *Gray's Inn*, in the county of *Middleſex*, gentleman, clerk to *Charles Benton*, attorney for the plaintiff in this cauſe, maketh oath and ſaith, that he this deponent on the 13th, 14th, and 15th days of this inſtant *June*, ſeverally ſerved the ſummons hereunto annexed, by ſeverally delivering true copies thereof to *William Riley*, attorney for the defendant in this

you an (*d*) order for the matter contained in the ſummons; which muſt be ſerved in like manner as ſummonſes.

If ſummons iſſues for any matter, which the ſuitors of the court are, by any rule or order thereof, bound to obey, or in which the judge cannot make an order *ex parte*, the non-attendance of the attorney, in caſes wherein it is his duty to attend to enable the judge to do the party juſtice, or non-compliance of the client, will ſubject them (on judge's order being made a rule of court, to obtain which is a motion of courſe) to an attachment of contempt.

The matter for which ſummonſes are granted, are very various; ſome, and the moſt uſual, are for the following purpoſes, *viz.* to pay (*e*) debt and coſts; to ſhew cauſe why

---

cauſe, and at the ſame time ſhewing him the ſaid annexed original ſummons. And this deponent further ſaith, that on the *three* ſeveral days and times therein mentioned he duly attended an hour thereon, but that the ſaid *William Riley*, or his agent, or any other perſon on their or either of their behalfs, did not on either of the ſaid three ſeveral days aforeſaid attend thereon, to the knowledge or belief of this deponent.

Sworn, *&c.* *G. H.*

(*d*) You pay judge's clerk two ſhillings for every order.

(*e*) The debt muſt be aſcertained between the parties, before any order can be obtained. If party applying doth not pay the coſts, when taxed, or at the time given by the order, the other ſide may proceed, as if no ſuch order had been obtained. Defendant on this ſummons may obtain five or ſix days to pay debt and coſts, but the

why common bail ſhould not be accepted, inſtead of ſpecial (*f*); when affidavit for latter is not ſufficient or well founded; for time to put in bail above; for leave to add to and perfect bail; for liberty to juſtify bail; and for time to plead.

If judge makes an order, for any of the above matters, which he generally does of courſe, if the party applies in time; it will be upon condition to obſerve the following (*g*) terms, *viz.* pleading (*h*) iſſuably, rejoining (*i*) *gratis*, taking (*k*) ſhort notice of trial, or of inquiry, if neceſſary, within term.

Where application is made, in a *town* cauſe, for time to put in, add to, or perfect bail; or for time to plead, defendant's attorney will be obliged to enter into an order to plead an iſſuable plea: and if he afterwards pleads a dilatory plea, or ſuch an one as prevents the law being argued, or the fact tried thereon; judgment may be ſigned

---

the judge will hold him to above mentioned terms, of pleading iſſuably, &c. if early in the cauſe, ſo that plaintiff may not be delayed of trial, in caſe defendant does not comply with the order.

(*f*) The grounds of this application muſt be ſupported by affidavit.

(*g*) Party will not be bound to all the terms, *viz.* pleading iſſuably, &c. on firſt ſummons, unleſs ſtate of cauſe requires them.

(*h*) See *P.* 182, *note* (*a*)

(*i*) See *Id. note* (*b*)

(*k*) See *Id. note* (*c*)

as if no plea had been pleaded, and give notice of executing writ of inquiry.

Summons for (*l*) time to plead was ſerved upon plaintiff's attorney, who attended an hour; but defendant's attorney never came; whereupon plaintiff's attorney ſigned judgment, which was ſet aſide by court as irregular, becauſe he had not previouſly diſcharged defendant's ſummons. *Barnes* 240.

In another caſe, plaintiff's attorney ſigned judgment, though he did not attend or diſcharge defendant's ſummons, or give him an opportunity to renew cauſe, defendant's attorney having offered to plead iſſuably, and take notice of trial, time enough for plaintiff to have tried his cauſe at laſt aſſizes; this judgment the court declared to be irregular, the ſummons not being diſcharged, and accordingly ſet it aſide. *Barnes* 255.

Priſoner may apply by ſummons (*m*) for an order for a *ſuperſedeas*, on not being declared againſt in two (*n*) terms after return of writ.

Bankrupt muſt (*o*) ſummon plaintiff before a judge, to ſhew cauſe why he ſhould

---

(*l*) Judge's ſummons, or order for time to plead ſhall be no bar to motion to change *venue*. Barnes 489.

(*m*) On neglect to attend the judge, he will make an order to diſcharge priſoner on *firſt* ſummons, for *that* is peremptory, this being a caſe of liberty.

(*n*) The term wherein the writ is made returnable, is always conſidered as one of the terms.

(*o*) The order of diſcharge or *ſuperſedeas* will be granted on the *firſt* ſummons.

not

not be discharged out of custody, having surrendered himself in discharge of his bail, and obtained his certificate; which he producing duly allowed, by the lord chancellor, judge will make an order directed to the (*p*) warden or keeper of the prison in which bankrupt is confined, to discharge him without fee or reward, he being detained at no other person's suit, since the bankruptcy. See *Barnes* 104.

Defendant may be discharged when in custody, after his bail is perfected, by (*q*) summons also before a judge.

An infant may have a summons granted him, for plaintiff to shew cause why defendant should not name a guardian to defend his suit.

Summons for an attorney to deliver in to his client, a bill of his fees and disbursements.

THIS summons should have the title of the causes, in which he makes his demand, on the margin thereof.

If the attorney neglects to attend, *three* summonses having been issued and served

---

(*p*) If prisoner is not in custody of *warden*, he must be discharged by writ of *supersedeas*, for an order in this case will only obtain the *supersedeas*, not authorize a discharge.

(*q*) But three summonses, and affidavit of their being regularly served, are necessary in this case.

for that purpoſe, the judge will order him *ex parte* to deliver his bill of fees and diſburſements in a reaſonable time, and if he makes further default on his being ſerved with a rule of court, (which is made of courſe upon motion and affidavit of the ſervice and neglect of attending the three ſummonſes,) an attachment of contempt will iſſue, upon which no bail is accepted, and the attorney can clear his contempt by no method but obeying the order of the judge, the rule of court, and paying the coſts of the attachment.

If the attorney delivers his bill, in obedience to the judge's order, party muſt take out a ſummons to ſhew cauſe, why the bill of fees and diſburſements delivered by him in the above named cauſes, ſhould not be referred to the prothonotary to be taxed; in caſe the attorney neglects to attend, being regularly ſerved with three ſummonſes, on affidavit thereof, and of attending thereon, and the client undertaking, in writing under his hand, to pay the attorney the whole ſum, that ſhall appear to be due to him on the taxation, the judge, on his application, will order the bill *ex parte* to be referred to the prothonotary to be taxed; whereon he marks an appointment for that purpoſe, at the bottom thereof; which order, with the appointment of taxation, muſt be ſerved on the attorney, whoſe bill is referred; in caſe the attorney does not attend, being duly ſerved with three appointments, the prothonotary, on affidavit thereof, and

of

of the regular attendances thereon, will tax the bill referred *ex parte.*

Pending the ſummons, order, and taxation, nor after (if the ſum, at which the bill is taxed, is tendered the attorney) he cannot bring an action. See *ante* 49. *ſtat.* 2 *Geo.* II. *chap.* 23. *ſect.* 23. *ante* 46, 47, 48.

On defendant's delivering a dilatory plea, if plaintiff makes up and delivers paper book; this amounts to a waiver of the agreement between the parties on judge's order, whereby plaintiff looſes his remedy thereon, and muſt then proceed on paper book, as if no ſuch order had ever been made.

Defendant may obtain *further* time, if not under all the above terms, provided ſuch order does not prevent cauſe being tried ſame term in which writ was made returnable; in caſe he could have gone to trial, had no time been granted.

Where cauſe of action, in country cauſes, is local, and cannot be tried but at the aſſizes, judge will be governed in his orders, in all the above caſes, according to the time of holding the aſſizes, ſo as not to prevent cauſe from being tried at the then next aſſizes, if plaintiff chuſes it.

In caſe either party reſides in the country, and cauſe of action is tranſitory, ſame doctrine is held as in a town cauſe, allowing for difference of notices to bring ſame to iſſue.

Miſtakes in declaration or iſſue, may be amended (*a*) by ſummons.

Proceedings on bail-bond, are ſtayed by order obtained on ſummons; provided trial be not loſt thereby, for in that caſe not even the court itſelf, on motion, will make a rule for that purpoſe: and in caſe judge makes an order, he will oblige defendant to perfect his bail previous thereto; and alſo to pay (*b*) coſts, receive a declaration, plead iſſuably, take ſhort notice of trial (*c*), ſo that the iſſue may be tried ſame term.

Mutual Debts, and Set offs.

Where there are mutual debts between plaintiff and defendant, or if either party ſue, or be ſued, as executor, or adminiſtrator, where there are mutual debts between teſtator or inteſtate, and either party; one debt may be ſet off againſt the other;

(*a*) All proceedings, while on paper, are amendable by ſummons, by the eſtabliſhed practice of this court; except declaration in *ejectment*, which court conſiders as firſt proceſs in that action.

(*b*) If the coſts, when *taxed*, be not paid, the action on the bail-bond may be proſecuted, as if no order had been made.

(*c*) If trial hath been loſt, bail muſt conſent that judgment may be entered againſt them on the bail-bond for plaintiff's ſecurity.

and

and ſuch matter may be given in (*a*) evidence, upon the general (*b*) iſſue, or pleaded in bar, as the caſe ſhall require, ſo as at the time of pleading the general iſſue, (*c*) notice be given of the particular ſum or debt, intended to be inſiſted upon, and upon what account it became due. Stat. 2 *Geo.* 2. chap. 22. ſect. (*d*) 13.

(*a*) Before this clauſe of the act, mutual debts were to be pleaded ſpecially in bar. *Rayn. Read.* on ſtat. 2 *Geo.* 2 chap. 22. ſect 13. p. 31.

(*b*) General iſſue in this clauſe, means any general iſſue. *Barnes* 290. *Ful. Ni. Pri.* 177, 178.

(*c*) Reaſon of directing notice to be given of the particular ſums intended to be ſet off, on pleading general iſſue, is, that plaintiff may thereby know nature of defendant's demands, and be prepared to controvert them, as well as prove his own. *Rayn. Read.* 31. This notice cannot be amended, but defendant may withdraw his plea, and plead *de novo*, with new notice of ſet-off. *Barnes* 308, 309. Trial not to be put off, for abſence of witneſs, who only proves this notice. *Barnes* 437. Plea tho' with notice of ſet-off muſt be delivered in town. *Rich. Pract Reg.* 125, 281.

(*d*) It had, it ſeems, been a practice in the courts of *Weſtminſter* Hall, (founded on principles of common law) to diſallow ſtoppage or retaining as payment, and for perſons mutually indebted to bring action againſt each other; whether their reſpective debts were of a leſs or equal amount, or of the ſame nature; the numberleſs vexations and real hardſhips this practice was daily productive of, induced the great and good Lord Chancellor *Talbot* to promote this law, (which is founded on the ſtricteſt ideas of equity and juſtice) to remedy the enormous evil in queſtion. *Rayner's* reading on this clauſe, p. 24. which is perpetuated by ſtat. 8 *Geo.* 2. chap. 24. ſect. 4. becauſe (ſays the legiſlature, in the preamble thereto) the proviſion was highly juſt and reaſonable at all times.

Not-

Notwithſtanding however the ſalubrity of this clauſe many (*e*) doubts were entertained in courts of juſtice, concerning the legal conſtruction thereof; the principal opinions have been collected by a gentleman (*f*) of ſome authority in the profeſſion, to whom we refer (*g*) the learned reader.

Theſe doubts occaſioning (*h*) contrariety of opinions, the legiſlature (*i*) thought proper to interfere, by enacting that "where there are mutual debts between plaintiff and defendant, and defendant's demand (and for which the action is brought) exceeds plaintiff's, the ſame ſhall be given in evidence," and for that purpoſe the defendant uſually pleads the general iſſue, and delivers a notice of ſet-off; which plea and notice are to be engroſſed on a treble penny ſtampt ſheet of paper, and left with the plaintiff's attorney; the perſon who leaves them muſt engroſs another copy of the plea and notice on a like ſtampt ſheet of paper, in order to read the ſame on the trial of the cauſe.

In caſe defendant's demand does not countervail plaintiff's, defendant muſt move court wherein action is depending, for leave to pay ſo much money therein, as, with his

---

(*e*) See *Barnes* 290, 354. *Rich. Pract. Reg.* 267.

(*f*) *John Rayner*, author of the readings above referred to.

(*g*) *Rayn.* Read. 24, 25, *&c.*

(*h*) Id. 28.

(*i*) By ſtat. 8 *Geo.* 2. chap. 24. ſect. 5.

own

own demand, will be ſufficient to ſatisfy plaintiff's.

Rule obtained on this motion muſt be drawn up and ſerved, by annexing copy thereof to general iſſue and notice; another copy of plea and notice is to be engroſſed as before obſerved, for the purpoſe of reading ſame on the trial of the cauſe, if neceſſary.

General iſſue with notice of ſet-off.

In the common pleas.

Eaſter *term, in the* 18th *year of the reign of king* George *the third.*

Jane Chapman, ſpinſter
againſt
John Rayner.

AND the ſaid *John*, by *Charles Singleton Darrington* his attorney, comes and defends the wrong and injury, when, &c. and ſaith that he did not undertake and promiſe in manner and form as the ſaid *Jane* above complains againſt him; and of this he puts himſelf upon the country.

Take (*a*) notice that the above named

(*a*) In the notice of ſet-off, the uſual way is for defendant to traverſe the counts in plaintiff's declaration, according to the nature of the caſe,

defen-

defendant intends to give in evidence, and inſiſt upon the trial of this cauſe, that the above named plaintiff, at the time of ſuing forth the original writ againſt the ſaid defendant in this cauſe, was and ſtill is indebted to the ſaid defendant in 40*l.* of lawful money of *Great Britain*, for divers goods, wares and merchandizes of the ſaid defendant by the ſaid defendant, to the ſaid plaintiff, at her ſpecial inſtance and requeſt, ſold and delivered; and alſo in 40*l.* of like lawful money, for ſo much money by the ſaid defendant, to and for the uſe of the ſaid plaintiff, at her like ſpecial inſtance and requeſt, paid, laid out, and expended. And alſo in other 40*l.* of like lawful money, for ſo much money, by the ſaid plaintiff, to the uſe of the ſaid defendant, had and received; and that the ſaid ſeveral ſums of money, or ſo much thereof as may be neceſſary, will be ſet off in ſatisfaction of and againſt the money ſuppoſed to be due to the ſaid plaintiff, for the matters contained in the declaration in this cauſe, according to the form of the ſtatute in ſuch caſe lately made and provided. Dated the 21ſt day of *February*, 1778.

Your's, &c.

C. S. Darrington, attorney
for defendant.

To *William Stock*, attorney
for the plaintiff.

Indorſement

Indorſement.

Eaſter Term, 18 *Geo.* 3.

Chapman ſpinſter and *Rayner.* } Plea and notice of ſet-off.

JUdgment of *B. R.* ordered to be ſet off againſt judgment of *C. B.* and balance due to plaintiff, to be paid by defendant in *C. B.* 3 *Wilſ. Rep.* 396.

In caſe of a ſet-off, where an indorſed note is ſet-off by defendant againſt plaintiff's demand, it muſt be proved that indorſer's name was written before plea pleaded. *Barnes* 453.

Motions.

ALL motions (*a*) muſt be made in open court, (except ſuch as are made in the treaſury,) for which purpoſe the ſerjeant who moves, muſt be furniſhed with an affidavit, ſtating the fact, on which he grounds his motion; if it is a matter of courſe, it is

(*a*) On theſe motions, rules, whether *Niſi* or abſolute, muſt be drawn up with ſecondary, and paid for, according to length.

granted,

granted, in the first instance, without reading the affidavit; if it is to be discussed before and by the court, notice must be given in writing of the intended motion, and the purport of it, to the adverse party's attorney, and affidavit of the service, as well of the merits must be produced to the court, which being read, a rule to shew cause is generally granted; this must be (*b*) served on adverse party's attorney, and an affidavit thereof prepared against the time appointed by the court for the opposite side to shew cause; whereupon he takes copies of all the affidavits, otherwise he will not be permitted to shew cause, which, for that purpose, are filed in the prothonotary's office.

The facts whereon these applications are made, vary extremely, but the most usual follow.

For error in process, or the notice subscribed thereto.

Previous to this motion, notice in writing must be given to the opposite party's attorney; a copy whereof, and of the writ

---

(*b*) To make perfect service of *rule*, original must be sworn to have been shewn to party, *at time of service*. *Barnes* says at time of *serving copy*, see *Barnes* 403. this expression seems absurd, for the *original* is *served* by delivering or leaving *copy*. *N. B.* This doctrine does not hold in service of process. *Barnes* 302. where same absurdity is repeated, but he hath adopted our mode of expression in p. 422.

(*a*) served,

(*a*) ſerved, an affidavit ſtating the error in the writ, and that he was ſerved with no (*b*) other, together with the affidavit of ſervice, muſt alſo be annexed, in order to be read in court, when the (*c*) motion is made; whereupon court grants a rule, *niſi*, which muſt be ſerved; on affidavit whereof court makes ſame abſolute, and directs coſts of application, at diſcretion; if cauſe be ſhewn, proceſs muſt be produced.

Error (d) on writ of inquiry, or execution thereof.

This (*e*) motion requires notice, affidavit thereof, and of facts; upon reading which, rule *niſi* will be granted, it muſt be ſerved; on affidavit whereof, court will make ſame abſolute, and order coſts, at their diſcre-

---

(*a*) Whenever defendant will take advantage of a miſtake in the proceſs of the court, he muſt produce the copy ſerved. *Barnes* 298.

(*b*) *Barnes* 298.

(*c*) This motion muſt be made, before interlocutory judgment ſigned, *Barnes* 256, 296. *ante* 92. or court will not interfere, ſo as to prevent ſuit being carried on to judgment.

(*d*) If defendant takes any ſtep in cauſe after *error* committed by plaintiff, in his proceedings, ſuch ſtep cures the irregularity, and court will not afterwards redreſs defendant; and ſo *vice verſa*.

(*b*) It muſt be moved, before rule on inquiry is out, elſe court will not releaſe.

tion; if cauſe be ſhewn, inquiry muſt be produced.

To ſet aſide aſſignment (c) of bail bond.

If plaintiff hath been irregular in taking the aſſignment, the court (*d*) will ſet it aſide, on defendant's putting in and perfecting his bail; and will ſubject plaintiff to the coſts of the application.

For payment of money into court, and for conciliums.

No notice or affidavit of facts is required on either of theſe motions. See more as to payment of money, *ante* 155 to 160. both incluſive.

For changing the Venue.

No notice requiſite, only affidavit, this motion cannot be made laſt day of term, becauſe (*e*) there is not a day left in term, for plaintiff to ſhew cauſe, and though defendant could not procure affidavit for that purpoſe (*f*) ſooner. See more on this ſubject, *ante* 161 to 165.

(*c*) For more on this ſubject. See *ante* 118.

(*d*) But the application by *ſummons* is a much eaſier expence.

(*e*) *Barnes* 480. *ante* 163.

(*f*) *Barnes* 486.

For

For ſpecial Jury.

Neither notice nor affidavit required. See *ante* 215, 216.

To put off trial for want of a material witneſs.

This motion requires notice and an affidavit of ſervice; and alſo of the (*g*) abſence of a witneſs, and that he is (*h*) material, where he is, and when he is expected to be ſubpœnable; and the motion muſt be made (*i*) two days, before the day of trial, or the court will (*k*) refuſe it.

This affidavit muſt be made by defendant (*l*) himſelf, and by no (*m*) other perſon; belief

---

(*g*) *Barnes* 437, 440, 452.

(*h*) *Ante* 215. If the witneſs ſworn to be abſent, is to prove notice of ſet-off only, court conſidering that matter as a collateral defence, refuſed to put off the trial, obſerving that no trial had been ever put off on that account. *Barnes* 437.

(*i*) It appearing, the witneſs being material was a matter that did not come to defendant's knowledge time enough to move two days before laſt day appointed for trial, the ſame was put off. *Barnes* 452.

(*k*) *Barnes* 438, 442, 444.

(*l*) *Barnes* 437.

(*m*) This was overruled, court obſerving, that there might be many caſes, in which a *third* perſon could ſwear another to be a material witneſs, and defendant himſelf

belief (*n*) only will not do. For more on this ſubject ſee *ante* 215.

For new (*o*) *trials or in* (*p*) *arreſt of judgment.*

If party, againſt whom verdict is obtained on trial, or judgment on inquiry, would have new trial or inquiſition, or would arreſt judgment on either; it muſt be done, if on verdict, before or on appearance day (*q*) of return of *Hab. Corp. Jur.* and on inquiry before time given to move in arreſt of judgment is (*r*) expired.

Motion to ſet aſide verdict muſt be made before judgment pronounced. *Ante* 219.

---

himſelf could not; and inſtanced a factor ſelling goods for his principal, and employing a porter to deliver them; in this caſe factor would know porter to be a material witneſs, but principal did not.

(*n*) *Barnes* 437, 448.

(*o*) See *ante* 219. Where any matter of title is in diſpute, and defendant obtains a verdict, court will not grant plaintiff a new trial, unleſs revenue is concerned, *Barnes* 440. nor in caſe verdict be for defendant on a penal ſtatute. *Barnes* 464 nor in ejectment, if verdict for defendant, otherwiſe if for plaintiff.

(*p*) See *ante* 219. Court will not arreſt judgment on matter party might have availed himſelf of, before iſſue joined. *M. S. Caſ.*

(*q*) *Barnes* 445.

(*r*) Unleſs the foundation of the motion, be ſome matter diſcovered afterwards. *Barnes* 442. ante 219.

If new trial or inquiſition be denied, party may afterwards move, on proper affidavit of facts, to arreſt judgment; but after motion in arreſt of judgment made and refuſed, new trial or inquiſition cannot be obtained.

In order to obtain arreſt of judgment, on *poſtea* or inquiry, the firſt motion is for (*s*) rule to bring them into court; affidavit muſt be made of ſervice of rule, and both annexed to affidavit of facts, on which the motion in arreſt of judgment is grounded.

The court will ſet aſide proceedings for any irregularity on either ſide, in the courſe of a ſuit, ſo as the party complained againſt be not put to a greater expence, than he would have been ſubject to, had the motion been made before.

If plaintiff enter appearance for defendant, before his time to enter ſame, is expired; this irregularity muſt be complained of, before judgment, *ante* 107.

Defendant cannot move to ſet interlocutory judgment aſide, unleſs motion be made two days before day appointed for (*t*) execution of writ of inquiry of damages. *Barnes* 255, 372.

If papers are required to be delivered up, which attorney refuſes, court on motion will rule him ſo to do, or iſſue attachment.

(*s*) Which muſt be drawn up with ſecondary, paid for 5*s*. and ſerved.

(*t*) So muſt an application for any irregularity in delivery or notice of declaration, *ante* 134.

BILL of COSTS on Motion to ſet aſide JUDGMENT.

Michaelmas Term, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Office copy of defendant's attorney's affidavit, at 8*d.* per folio, beſides duty									
Cloſe copy ſent, at 4*d.* per folio	0	0	0	0	1	8	0	3	4
Affidavit of plaintiff, at 8*d.* per folio, beſides duty and oath	0	2	7	0	8	7	0	13	7
Affidavit of plaintiff's attorney, fo. 18, at ſame rate	0	2	7	0	9	7	0	14	7
Another fo. 5	0	2	7	0	4	3	0	5	11
Brief of affidavits, fo. 48, at 2*d.* per folio	0	0	0	0	6	8	0	13	4
Office copy of rule *niſi*	0	3	6	0	3	6	0	3	6
Fair copy of brief for council, four ſheets	0	0	0	0	6	8	0	13	4
Fee to ſerjeant therewith	2	2	0	2	2	0	2	2	0
Attending him and court when rule diſcharged with coſts	0	0	0	0	3	4	0	6	8
Rule	0	5	0	0	5	0	0	5	0
Copy and ſervice	0	0	0	0	1	0	0	2	0
Drawing bill of extra coſts	0	0	0	0	0	6	0	1	0

Attending

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending taxing ſame	0	0	0	0	1	8	0	3	4
Term fee and letters	0	0	0	0	3	6	0	7	0
Fi. fa.	0	3	0	0	6	6	0	10	0
Warrant thereon, and meſſenger	0	2	4	0	2	10	0	3	4
Officer for levy	1	1	0	1	1	0	1	1	0
Poundage on 80 *l.* at rate of 1 *s.* per pound									

Action for Crim. Con.

IN caſes of this kind, which differ from actions brought upon contracts, no bail is required, unleſs by the ſpecial (*a*) order of a judge, which defendant hath a right to apply to court to (*b*) diſcharge, if not well founded. *Rich. Pract. Reg.* 63.

This action not being conſidered, as a mere action of aſſault and battery, within the meaning of *ſtat.* 22 and 23 *Car.* II. *chap.* 9. *ſect.* 136. but an action founded on ſpecial damage; be the damages given by the jury ever ſo ſmall, plaintiff ſhall have full coſts, without certificate of judge, under ſaid act of parliament. 3 *Wilſ. Rep.* 319.

(*a*) *Catmur* was held to bail upon lord chief juſtice's order, upon affidavits of *Crim. Con.* with *Hadderweck*'s wife, and had four days time to put in ſame. *Barnes* 61.

(*b*) *Catmur* applied to court, and upon reading affidavits of himſelf and *Hadderweck*'s wife, that *Hadderweck* having been long beyond ſeas, and ſhe having had advice of his death, received *Catmur*'s addreſſes, and married him as her ſecond huſband; the chief juſtice, (to whom *Catmur* had before applied at his chambers, and before whom the above affidavits were read, and who ordered him to apply to court,) was of opinion, that the order for bail ought to be diſcharged, nothing criminal appearing in *Catmur*, *Forteſcue* and *Reeve*, j. thought, that entring into foundation of order, was examining merits of cauſe, and therefore improper before trial. *Denton* j. was abſent. *Barnes* 61.

Trial at bar granted, the damages laid in the declaration, being (*c*) conſiderable, and a great (*d*) number of witneſſes to be examined; plaintiff having liberty to examine a witneſs in an ill ſtate of health, before a judge in the mean time, and defendant conſenting to waive his privilege of (*e*) parliament. *Barnes* 438. *Rich. Reg.* 411. *Co. Caſ.* 103.

Plaintiff muſt prove his (*f*) marriage on the trial; which may be done, either by copy of regiſter, or by teſtimony of one who was preſent at ceremony; and it is ſufficient to prove the marriage, according to form of any religion, as of Anabaptiſts, Quakers, Jews, *&c.* *Bul. Ni. Pri.* 28.

(*c*) *Viz.* 50,000 *l.* *Rich. Reg.* 411. *Barnes* 438.

(*d*) Upwards of 20. *Barnes* 438.

(*e*) *Quere*, the authority of a court of juſtice to enjoin a member of parliament to waive his privilege, he not being at liberty to do it, according to the better opinion, without leave of the houſe, firſt obtained by order therein, on motion; for it is not a perſonal common right, but a public ſpecial privilege, founded in political convenience, and therefore does not ſeem to fall within even the rule of "*Quilibet poteſt renunciare jure* PRO SE *introducto*," mentioned by the Engliſh "*Servius Sulpitius.*" See 2 *Inſt.* 183.

(*f*) *Pratt*, ch. j. delivered it as the opinion of this court, that "defendant's having ſeriouſly and ſolemnly declared, he knew the woman he had ſeduced was plaintiff's wife," would be evidence proper to be left to the jury, *without proving the marriage.* Wilſ. Rep. B. R. 399.

Wife's confeſſion will be no evidence againſt (*g*) defendant; ſo letters (*h*) written to her by defendant, may be read as evidence againſt him.

Proper plea under ſtatute of limitations, [*viz.* 21 *Jac.* I. *chap.* 16.] is not guilty within ſix years. *Introduct.* (*i*) *to Law relative to Trials at* Ni. Pr. 28.

Directions for inrolling Deeds.

CARRY the deed to a judge, either at his chambers or houſe, or, if in term time, it may be done in *Weſtminſter* Hall; in caſe of a bargain and ſale, one of the parties muſt attend and acknowledge it; but if the deed only requires the judge's *fiat*, then the party need not attend, for the judge grants a *fiat* (*a*) of courſe, which, as well

---

(*g*) But a diſcourſe between her and him, may be proved. Trial at *Ni. Pr.* 28.

(*h*) But her letters to him will be no evidence for him. *Id. ib.*

(*i*) This introduction is ſaid to be originally wrote by lord chancellor *Bathurſt*, and reviſed by Mr. *J. Buller.*

(*a*) The *fiat* is wrote on the margin of the deed, generally by the judge's clerk; the form whereof may be as follows: "Let this deed be inrolled in his majeſty's court of *Common Pleas*, at *Weſtminſter*. [If a Roman Catholic deed, add the words "*purſuant to the act of parliament*" immediately after the word "*Weſtminſter.*"] Dated this 20th day of *March* 1778, before *George Nares*,
(judge's name)

as

as the (*b*) acknowledgement, are the officer's warrant for inrolling the deed.

Clerk of (*c*) warrants of attorney, supplies you with rolls *gratis*, for ingroſſing (*d*) the deeds on.

If attorney ingroſſes the deed; after examining the ſame, he takes it to warrant of attorney's office, and the (*e*) clerk will immediately indorſe, docquet, and inroll it, being obliged ſo to do.

All deeds inrolled are docqueted or entered in alphabetical order in warrant of attorney's office, for the convenience of thoſe who may have occaſion to ſearch, or take copies or extracts thereof.

(*b*) The acknowledgement is wrote on the margin of the deed, generally by the judge's clerk; the form whereof may be as follows:

"The execution of this deed was acknowledged (in court) by *James Cox*, (*the perſon acknowledging ſame*) party thereto, this 20th day of *April* 1778, before
GEORGE NARES."

(*c*) His office is kept at N°. 6. *Clifford's Inn, Fleet Street.*

(*d*) Clerk of warrant, if deſired, is obliged to ingroſs the deed upon the rolls.

(*e*) It not being neceſſary in this court, as in *King's Bench*, for attorney to indorſe deed, or carry in docquet.

Fees

Fees for inrolling.

	Offi. Ch. *l.* *s.* *d.*	Attorn. *l.* *s.* *d.*
Acknowledging in court	0 1 0	0 1 0
Before a judge at chambers	0 5 0	0 5 0
Fiat —— ——	0 2 6	0 2 6
Inrolling per ſheet (92 words)	0 0 3	0 0 8
Docqueting — —	0 1 0	0 3 4

A Rule

A Rule or Meaſure of Coſts comprehending ſuch Items of Diſburſements and Fees, as have not occurred, or been before ſubmitted to the Reader, in the former Part of this volume.

WRITS.	*l.*	*s.*	*d.*
NON omittas capias ——	0	10	2
Attachment of contempt	0	8	3
Attachment proper ——	0	8	3
Teſtatum attachment ——	0	10	6
Subpoena ducens tecum ——	0	8	0
Drawing and ingroſſing *Scire facias* *per* ſheet each ——	0	0	8
beſides fee ——	0	6	8
Special original, *per* ſheet —	0	0	8
Fee ——	0	6	8
Writ of poſſeſſion fee 3*s.* 4*d.* Making the writ 1*s.* 8*d.* —	0	5	0
Teſt. Fi. Fa. and *Ca. Sa.* each	0	10	6

SERVICE, *&c.*

Serving notice of declaration, or executing a writ of inquiry (if under 20 miles 3*d. per* mile to and from the place, *i. e.* 6*d. per* mile in the whole.

The like allowance in caſe of conduct-money.

If

	l.	*s.*	*d.*
If above 20 miles, for a neighbouring attorney ——	0	10	6
To allow 1*s.* 4*d.* for every defendant the plaintiff appears for, over and above the 5*s.* 4*d.* allowed for the firſt defendant.			
Entring appearance between attorney and client ——	0	5	4
Copies of affidavits in order to ſhew cauſe, *per* ſheet —	0	0	4

ACTIONS *on judgments or ſtatutes.*

	l.	*s.*	*d.*
Drawing, *per* ſheet ——	0	0	8
Copying ——	0	0	8
Entring —— ——	0	0	8
Term fee ——	0	6	8

ISSUES, *&c*

Drawing forejudger 2*s.* ingroſſing the whole, *per* ſheet —	0	0	4
Drawing and ingroſſing affidavit, *per* ſheet ——	0	0	8
Drawing judgment 2*s.* ingroſſing the whole, *per* ſheet ——	0	0	4

Preparing for TRIAL.

Town witneſſes (if the charge exceeds 40*s.* allowed in common coſts) *per diem* ——	0	2	6
Country witneſſes, *per diem* ——	0	5	0

Attend-

	l.	*s.*	*d.*
Attending the trial every day 6*s.* 8*d.* and on the day of trial, between attorney and client	0	13	4
If between party and party, in the whole	0	13	4

Bail-Bonds.

Common coſts in the ſheriff's name	2	10	0
On an aſſignment, if 12 ſheets judgment by *Nil dicit*	4	10	6
For every three ſheets more	0	10	0
If the plaintiff enter appearance for defendant, more	1	0	0
On *Comper' ad diem*, the old way	3	10	0
On the new way	5	10	0
For every 3 ſheets above 12 in a declaration	0	10	0

Non Pros.

For not declaring where appearance	1	13	4
With bail, more	0	10	0
For not replying	2	13	4
If bail, more	0	10	0
For not joining in demurrer to declaration	3	6	8
Bail, more	0	10	0
And for every other pleading more, if ſhort	1	0	0
For not entering iſſue	3	3	4
Bail more	0	10	0
For every count more than the firſt	0	3	0

Cogn'

COGN' DAMPN'.

	l.	s.	d.
1. Narr' the ſame —	5	0	0
Of different terms —	5	10	0
Every Narr' more —	0	10	0
With bail more —	0	10	0

By DEFAULT.

Inquiry 1 Narr' —	7	10	0
Every Narr' more —	0	10	0
If plaintiff enters appearance	1	0	0
If in treſpaſs and impriſonment, aſſault, &c.	7	16	8
If plaintiff enter appearances	8	16	8

TRIALS.

Common coſts 1 count —	14	10	0
For every count more —	0	10	0
For treſpaſs, aſſault, or impriſonment, 5 ſheets or under	14	16	8
Fvery three ſheets more —	0	10	0
In ejectment, on demiſe —	15	16	8
Every demiſe more —	0	10	0
Common coſts for not confeſſing leaſe, entry and ouſter on the rule —	16	16	8
Attending taxing coſts, though many cauſes in a bill, only conſidered as one cauſe, ſo only	0	3	4

OBSERVATIONS.

1. Nothing for attending a ſheriff or marſhal in any caſe.

2. Decla-

2. Declaration where *Habeas corpus* is brought to follow the office the *Habeas corpus* is ſigned in.

3. Counts in a declaration, at the ſuit of attorney, unleſs it appears on the face of the declaration, that he ſues for fees, are to be paid for; and no privilege where he is defendant, either as to appearance or pleading.

4. No declaration to be allowed if the plaintiff be ſummoned the day before the return; but if ſerved upon the return-day, then declaration and entry to be allowed if declaration produced.

5. No maps to be allowed on trials *inter parties.*

6. No wrong or under-charge to be ſupplied in any manner, except in fee for paſſing record when only charged 3*s.* 4*d.* inſtead of 6*s.* 8*d.*

7. Nothing extraordinary to be allowed for arreſting defendant, or ſerving him with proceſs than the uſual fee of 10*s.* 6*d.* and 5*s.* for extraordinary expence and trouble, even between attorney and client, unleſs by the latter's expreſs orders.

Plaintiff's

Plaintiff's BILL of DISBURSEMENTS and FEES, on Defendant's being arreſted.

Eaſter Term, 1778.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions, *&c.*	0	0	0	0	2	2	0	4	4
Affidavit of debt	0	2	7	0	4	1	0	5	7
Teſt. Cap. out of *Mid.* into *London*	0	8	9	0	14	10	1	1	0
Warrant and meſſenger	0	0	6	0	1	0	0	1	6
Paid officer	0	10	6	0	10	6	0	10	6

Trinity Term following.

Searching whether bail filed	0	0	0	0	1	8	0	3	4
Entring exception thereto, and notice thereof, copy and ſervice	0	0	0	0	1	3	0	2	6
Motion in Treaſury for ſheriff to return *capias*	0	0	0	0	1	8	0	3	4
Rule	0	4	6	0	4	6	0	4	6
Copy and ſervice	0	0	0	0	1	0	0	2	0
Attending court when other bail added and juſtified	0	0	0	0	1	8	0	3	4
Declaration 1 *s.* per fol.									

Entring

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Entring on roll and paid prothonotary	0	6	0	0	8	0	0	10	0
Copy on ſtamp delivered folio 10, warrant and duty	0	0	3	0	2	3	0	4	3

If Defendant was ſerved with Copy of Writ only, and not arreſted, the Items will be as follow:

Inſtructions, &c.	0	0	0	0	2	2	0	4	4
Capias	0	4	10	0	7	11	0	11	0
Cap. per cont.	0	3	6	0	6	7	0	9	8
Two copies and ſervice	0	0	0	0	5	0	0	10	0
Searching for appearance	0	0	0	0	1	8	0	3	4
Affidavit of ſervice of proceſs	0	2	7	0	4	1	0	5	7
Appearance purſuant to the ſtatute	0	2	6	0	4	2	0	5	10
Declaration and copy 1*s. per folio*	0	0	0	0	6	0	0	12	0
Entry on roll, and paid prothonotary	0	6	8	0	9	4	0	12	0
Copy on ſtamp left in office, warrant and duty	0	0	3	0	2	7	0	4	11
Notice of declaration filed, copy and ſervice	0	0	0	0	1	0	0	2	0
Rule to plead	0	1	10	0	2	2	0	2	6
Searching for, and demanding plea	0	0	0	0	2	8	0	5	4
General iſſue	0	0	0	0	0	6	0	1	0

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Drawing part of iſſue, at 8 *d.* per folio									
Copy of whole iſſue, at rate of 4 *d.* per folio									
Entry of iſſue on roll, and paid prothonotaries	0	6	0	0	9	0	0	12	0
Warrants of attorney	0	0	8	0	1	8	0	2	8
Entring cauſe for trial	0	13	0	0	13	4	0	13	4
Attending for that purpoſe	0	0	0	0	1	8	0	3	4
Notice of trial, copy and ſervice	0	0	0	0	1	0	0	2	0
Stamp and parchment for record	0	6	6	0	6	6	0	6	6
Ingroſſing, at 4 *d.* per folio									
Paid prothonotary marking ſame	0	1	0	0	1	0	0	1	0
Sealing record, jurata, and ſeal	0	11	2	0	11	2	0	11	2
For ingroſſing ſame	0	0	0	0	3	4	0	6	8
Venire	0	4	0	0	6	2	0	8	4
Return thereof	0	2	6	0	2	6	0	2	6
Hab. Corp. jur.	0	4	5	0	6	8	0	9	0
Subpœna	0	3	8	0	5	4	0	7	0
Four tickets	0	0	0	0	1	0	0	2	0
Service	0	0	0	0	5	0	0	10	0
Conduct money	0	4	0	0	4	0	0	4	0
Inſtructions for brief	0	0	0	0	3	4	0	6	8
Drawing ſame, two ſheets	0	0	0	0	6	8	0	13	4

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Two fair copies for council	0	0	0	0	6	8	0	13	4
Fee to ſerjeant *W.* with brief	4	4	0	4	4	0	4	4	0
To his clerk	0	2	6	0	2	6	0	2	6
Fee to ſerjeant *S.* with brief	1	1	0	1	1	0	1	1	0
To his clerk	0	2	6	0	2	6	0	2	6
Attending council	0	0	0	0	3	4	0	6	8
May 20, attending court	0	0	0	0	3	4	0	6	8
Making cauſe *remanet*	0	4	0	0	4	0	0	4	0
Reſealing record	0	1	0	0	1	0	0	1	0
Attending for that purpoſe	0	0	0	0	1	8	0	3	4
Reſealing *diſtringas*	0	0	1	0	0	1	0	0	1
Ditto *ſpa*	0	0	1	0	0	1	0	0	1
30th, Attending court when plaintiff non-ſuited	0	0	0	0	6	8	0	13	4
Court fees about	1	7	8	1	7	8	1	7	8
Term fee, letters, *&c.*	0	0	0	0	3	6	0	7	0

Michaelmas Term following.

Motion at ſide bar for notice of time of taxing coſts	0	0	0	0	1	8	0	3	4
Rule	0	0	0	0	4	0	0	4	0
Copy and ſervice	0	0	0	0	1	0	0	2	0
Stamping *poſtea*	0	5	0	0	5	0	0	5	0

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending	0	0	0	0	1	8	0	3	4
Bill of coſts and copy	0	0	0	0	2	6	0	5	0
Notice of taxing coſts	0	0	0	0	1	0	0	2	0
Taxing ſame	0	0	0	0	1	8	0	2	6
Prothonotary	0	5	4	0	5	4	0	5	4
Clerk of judgments	0	2	6	0	2	6	0	2	6
Term fee, letters, *&c.*	0	0	0	0	3	0	0	7	0

Defendant's BILL of FEES, and DISBURSEMENTS on putting in Bail under an Arreſt.

Trinity Vacation, 1777.

Inſtructions and warrant to defend	0	0	0	0	2	2	0	4	4
Copy of writ from ſheriff	0	0	4	0	0	6	0	1	0
Allowing bail by judge [If term time only 5*s.*]	0	12	0	0	12	0	0	12	0
Ditto by filacer	0	4	6	0	4	6	0	4	6
Notice thereof, copy and ſervice	0	0	0	0	1	6	0	3	0
Notice of juſtification, copy and ſervice	0	0	0	0	1	6	0	3	0
Affidavit thereof	0	2	7	0	4	1	0	5	7
Paid filacer attending court	0	3	4	0	3	4	0	3	4
To council to move	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4

If Bail juſtifies at Judge's Chambers, the Items are,

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid filacer attending judge	0	3	4	0	3	4	0	3	4
Attending judge	0	0	0	0	1	8	0	3	4

N. B. *Then no Affidavit of Juſtification is neceſſary, when the Fees,* &c. *are as follows:*

Inſtructions and warrant to defend	0	0	0	0	2	2	0	4	4
Copy of writ from ſheriff, and poſtage	0	0	6	0	1	0	0	1	6
Special bail piece and duty	0	2	2	0	3	10	0	5	6
Paid acknowledgement before commiſſioner	0	3	6	0	3	6	0	3	6
Attending him thereon	0	0	0	0	1	8	0	3	4
Affidavit of juſtification	0	2	7	0	4	1	0	5	7
Attending judge	0	0	0	0	1	8	0	3	4
Paid filing bail, and affidavit of juſtification with filacer	0	7	0	0	7	0	0	7	0
Attending for that purpoſe	0	0	0	0	1	8	0	3	4
Notice thereof, copy and ſervice	0	0	0	0	1	6	0	3	0
Letters, &c.	0	0	6	0	1	6	0	2	6

BILL of Fees, &c. when Cauſe tried by ſpecial Jury.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*d.*	*d.*
Inſtructions to move	0	0	0	0	1	3	0	2	6
To council for motion	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Rule	0	4	0	0	4	0	0	4	0
Copy and ſervice, with prothonotary's appointment	0	0	0	0	1	0	0	2	0
His fee	2	2	0	2	2	0	2	2	0
Attending to name, 48	0	0	0	0	3	4	0	6	8
Copies of liſts	0	2	6	0	2	6	0	2	6
Sheriff attending with book of freeholders	2	2	0	2	2	0	2	2	0
Striking out 24	0	0	0	0	1	8	0	3	4
Copy thereof	0	2	6	0	2	6	0	2	6
Special *Hab. Corp. Jur.*	0	9	2	0	10	4	0	12	6
Returning ſame	0	12	0	0	12	0	0	12	0
Sheriff ſummoning jury	2	2	0	2	2	0	2	2	0
Each juryman 1 guinea	12	12	0	12	12	0	12	12	0

COSTS on a VIEW.

Affidavit of neceſſity of view	0	2	7	0	4	1	0	5	7
To council to move	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4

Rule

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Rule	0	8	0	0	8	0	0	8	0
Copy and ſervice	0	0	0	0	1	0	0	2	0
Meeting at ſheriff's office to ſettle view	0	0	0	0	3	4	0	6	8
Summoning jury for view	1	1	0	1	1	0	1	1	0
Each juryman thereon 1 guinea	12	12	0	12	12	0	12	12	0
Sheriff	2	2	0	2	2	0	2	2	0
Expences for coach-hire, at coffee houſe, and for refreſhments									
Attending view	0	0	0	0	10	6	1	1	0
Surveying and mapping premiſſes in queſtion	5	5	0	5	5	0	5	5	0
Three copies for counſel	0	0	0	0	15	0	1	10	0
Surveyor attending trial	1	1	0	1	1	0	1	1	0

BILL of COSTS on entring Satisfaction on Judgment.

If in Term Time.

Warrant of attorney to acknowledge ſatisfaction on record	0	5	1	0	10	6	1	1	0
Searching docquet for number roll of judgment	0	0	0	0	1	8	0	3	4
Paid for every term 4 *d.*									

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Clerk of treaſury drawing and entring	0	2	0	0	2	0	0	2	0
Cryer bringing roll into court	0	1	0	0	1	0	0	1	0
Prothonotary	0	2	0	0	2	0	0	2	0
Secondary	0	1	0	0	1	0	0	1	0
To him for entring ſatisfaction	0	4	0	0	4	0	0	4	0
To box at the rate of one ſhilling for every 100*l.* mentioned in judgment.									
Attending Weſtminſter	0	0	0	0	1	8	0	3	4
Term fee, letters, *&c.*	0	0	0	0	3	0	0	6	0

If in Vacation.

Fiat parchment and ingroſſing	0	0	2	0	1	10	0	3	6
Chief juſtice's clerk	0	12	0	0	12	0	0	12	0
Prothonotary	0	2	0	0	2	0	0	2	0
Clerk of judgments	0	5	4	0	5	4	0	5	4
Fee on acknowledging ſatisfaction	0	0	0	0	3	4	0	6	8
If judgment above ten years old, clerk of treaſury more	0	4	0	0	4	0	0	4	0

Of the duty and fees of the ſheriff of Middleſex, *his under-ſheriff*, &c.

IT is the duty of the ſheriff of *Middleſex*, by himſelf and deputies, to attend all his majeſty's courts, judges, juſtices and commiſſioners within his county; and to execute all writs and proceſſes by them and every of them directed to him; and alſo to hold his county-courts, tourns and court leets within the ſame.

The ſheriff of *Middleſex*, who are alſo ſheriffs of *London*, is nominated by the citizens thereof; and are, as ſheriffs of *London*, at much greater expence in paſſing through their office than the ſheriff of any other county in *England*; and therefore oblige their under-ſheriff of *Middleſex*, out of the fees and profits ariſing from that office, to advance money from time to time to pay all rewards payable by the ſaid ſheriff for apprehending highwaymen and other malefactors, which are given by ſeveral acts of parliament, and to pay the wages of the juſtices of peace attending at the ſeveral ſeſſions of the peace for the ſaid county of *Middleſex*, and to bear part of the expence of the entertainments at the ſeſſions of gaol-delivery held in the *Old-baily*, *London*, for the county of *Middleſex*, which, together with other charges incident to the ſaid office, amounts annually at leaſt to the ſum of 450*l.* For the diſpatch of the buſineſs of the county he keeps his office in *Took's Court*, *Carey Street*, *Lincoln's*

Lincoln's Inn Fields, wherein, beſides his own attendance, three clerks are daily employed (*Sundays* and holidays excepted); they have no ſalary nor wages, but the allowance hereafter mentioned out of the fees. And in conſideration of his giving ſecurity to the ſaid ſheriff in the ſum of 12,000 *l.* to indemnify him from all damages and loſſes that may happen from the miſtake, omiſſion or miſdemeanor of him, his deputies, clerks or bailiffs, the ſheriff hath granted to him all the lawful fees, profits and perquiſites belonging to the ſaid office; and in virtue thereof he claims the ſeveral fees and ſums of money hereafter mentioned, which are all the fees belonging to the ſaid office, except what may be claimed by the county clerk.

To

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
To the charge of paſſing the ſheriff's accounts for *Middleſex* in the *Exchequer* by Stat. 3 *Geo.* 2.	119	3	0						
Of every bailiff, when admitted into his office, in lieu of all fees due to the ſheriff on arreſts that may come to his hands, except fees on executions (commonly called *poundage.*)	6	10	0						
Of every bailiff more for his indenture of covenants and bond to perform the ſame, and attending the execution thereof				1	1	6			
For every warrant on a bill of *Middleſex*, *Capias* or *Quo minus*	0	0	4						
For every name more than one				0	0	4			
For every warrant on a ſpecial *Capias* or *Quo minus*, *i. e.* containing the whole declaration	0	0	4	0	2	0	0	2	4
For every warrant on a writ of *Scire facias*, extent, *Elegit*, ſummons againſt privileged perſons, original in real or perſonal actions, *Pone*, *Ven. facias* out of the *Exchequer*, attachment for the peace out of the crown office, *Diſtringas*, writ of poſſeſſion, *capias excommunication*, *Ne exeat regno*, *Supplicavit*, and *Capias ſi laicus*				0	2	4			
For every bail bond taken in the office, (which rarely happens, the bond being uſually taken from defendants in cuſtody, by the bailiff,) for ſearching the office and making a *Superſedeas* to ſet the defendant at liberty				0	9	4			
For taking ſecurity on a writ of *Ne exeat regno*; ſearching the office, and *Superſedeas* to ſet the defendant at liberty				1	1	0			

For

	Sheriff. l. s. d.	Clerks. l. s. d.	Total. l. s. d.
For a bond on an attachment *pro pace* out of the crown office		0 2 4	
For taking security on a writ of *Supplicavit*, which rarely happens, searching the office, and for a *Supersedeas* to set the defendant at liberty		0 10 6	
For the assignment of every bail bond	0 2 4		
For the plaintiff's discharge for the same	0 2 4	0 5 0	
For the return of the writ	0 0 4		
For the delivering up of a bail bond back to the deft. by the plt.'s order		0 5 0	
Fees for returns of writs			
For allowing every writ of *Habeas corpus cum causa*	0 4 8		
For the return thereof, if but one writ to be returned against the defendant	0 2 4		
	0 2 0	0 7 4	0 9 4
For a warrant to the bailiff to conduct the defendant before the judge or court, as the writ is returned	0 2 4		
For every other writ against the defendant returned thereon	0 2 0	0 0 4	0 2 4
If the defendant is in the gaol, then for a warrant to the keeper to deliver the defendant to the bailiff		0 2 4	
For executing a writ of inquiry of damages and return of the inquisition thereon	0 10 0	0 3 4	
To the bailiff for summoning and swearing the jury	0 4 0		
For the use of the court-house or room where the writ is executed	0 1 0		1 10 4
To the jurors, each 1*s*.	0 12 0		
	0 17 0		
For swearing each witness		0 0 4	

For

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For taking an inquiſition on a *Capias utlagatum*, Schedule of the goods ſeiſed and return thereof		0 18 6	
To the bailiff for ſummoning the jury	0 4 0		
To the uſe of the room where the inquiſition is taken	0 1 0		
To the jurymen, each 1*s.*	0 12 0		
	0 17 0		1 15 6
If more than one finding, for every other		0 3 4	
The like on extents		0 18 6	
For every finding, if more than one, each		0 3 4	
Attending each adjournment		0 10 0	
For a ſummons for a witneſs to give evidence		0 2 0	
For taking an inquiſition on a *Scire fieri* inquiry, inquiſition and return thereof	0 10 0	0 8 6	0 18 6
For the return of a *Cepi corpus* or *Non invent.* on every bill of *Middleſex*, *Capias*, *Quo minus*, *Capias ad ſatiſfaciendum*, and *Capias utlagatum*, if on inquiſition taken		0 0 4	
For the like return, if by a bailiff of a liberty		0 0 8	
Return of *Iſtud breve*		0 0 4	
For returning *Fieri feci* on a *Fieri facias*		0 2 0	
If by the bailiff of a liberty		0 4 0	
For returning *Nulla bona* thereon		0 1 0	
If by the bailiff of a liberty		0 2 0	
For ſpecial returns, ſuch as reſcue, defendant diſcharged by *Superſedeas*, or committed to the *Fleet* or *King's Bench* priſon on a writ of *Habeas corpus*		0 2 4	
For the return of *Venditioni exponas*		0 2 0	
For the return of *Scire feci*, each name		0 2 0	

For

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For the return of *Nihil* or *Mortuus* on a *Scire facias*				0	1	0			
For the return of an eſcape warrant				0	2	0			
For the return of a *Venire facias*, ſummons againſt privileged perſons, or original that the deft. is ſummoned				0	2	0			
For the return of a *Nihil* thereon				0	1	0			
For the return of *Non invent.* on an attachment out of the courts of *Chancery*, *Exchequer*, or dutchy of *Lancaſter*.				0	1	0			
For the return of a *Cepi corpus* thereon				0	2	0			
For the return of *Non invent.* on a proclamation out of the courts of *Chancery*, *Exchequer*, or dutchy of *Lancaſter*				0	2	0			
For the allowance of every writ of *Superſedeas* or reſtitution	0	2	0	0	0	4	0	2	4
For a warrant thereon to diſcharge the defendant's body or goods out of cuſtody				0	2	4			
For the return of a writ of *Venire facias juratores*, with the panel of 48 freeholders names thereto annexed	0	2	0						
For the return of a writ of *Diſtringas* or *Habeas corpora*, with a panel of 48 freeholders names annexed thereto	0	12	0						

N. B. The ſheriff makes up a panel of 48 jurymen for each court in *Weſtminſter-hall* every term, but before he can do that by his officer, he inquires after a competent number of perſons names taken out of the freeholders book for that purpoſe; makes out a warrant to his bailiffs to ſummons them; delivers a panel to the marſhal of each chief juſtice or chief baron; attends the court by himſelf or deputy during each ſeſſions of *Niſi prius*, and after term enters the names of each juryman in an alphabetical regiſter, and gives certificates to each juryman of his attendance (if required); for all which no fee is claimed or taken.

For

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For the return of a writ of poſſeſſion				0	2	0			
Attending the maſter of the *King's bench* office, prothonotary of the court of *Common Pleas*, or deputy remembrancer of the court of *Exchequer*, from the plaintiff and defendant, each one guinea	2	2	0						
For attending with the jury on a view and certifying to the court that the view has been had, the ſame fee as is paid to each juryman									
For attending every trial at bar, or at *Niſi prius*, where a ſpecial jury is ſummoned, the ſame fee as is given to each juryman after the trial									
N. B. The laſt mentioned fee is taken by the under-ſheriff or clerk who attends the trial.									
For every warrant to a bailiff to ſummon a ſpecial jury				0	2	4			
Fees called poundage:									
For taking a defendant in execution, or levying the goods, for every ſum of money not exceeding 100*l.* for every 20*s.* thereof	0	1	0						
For every 20*s.* exceeding that ſum	0	0	6						
For the like on an extent, *Fieri facias*, or *Capias ad ſatisfaciendum* at the ſuit of the king	0	1	6						
For every 20*s.* after the firſt 100*l.*	0	1	0						
For every 20*s.* levied on a *Levari facias* the ſummons of the pipe or green wax (except poſt fines)	0	1	0						
For executing every writ of poſſeſſion for every 20*s.* of the yearly value of the premiſſes, of which poſſeſſion is given	0	1	0						

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For the return of a precept to ſummon the jury before the commiſſioners in a commiſſion of ideocy or lunacy, and attending thereon	2	2	0						
For the return of a *Venire facias jur'* and attending the trial of a traverſe at the ſeſſions of the peace on every indictment except for felony, or where the defendant is in priſon				0	10	0			
N. B. The ſheriff ſummonſes, impanels and returns 8 grand juries in the year at the ſeveral ſeſſions of the peace at *Hicks's hall*, and attends by his deputy during all the time of the ſeſſions there, and alſo returns 8 juries in the year at the ſeveral ſeſſions at the *Old Bailey*, beſides party juries and juries of matrons; and attends there without any other fee or reward whatſoever.									
For a bill of ſale of goods on a *Fieri facias*, and an inventory thereunto annexed				0	9	0			
For a bill of ſale of a term of years				0	13	4			
The like on a *Venditioni exponas*				0	13	4			
For allowing a writ of *Non ponend. in aſſiſ.*				0	13	4			
For charging a defendant in cuſtody with every other writ than that on which he is arreſted				0	2	4			
For a certificate in order for a *Superſed.*				0	2	4			
For a certificate that the defendant is in execution in order for his diſcharge by the late act of parliament				0	2	4			
For his diſcharge by the rule of court thereon	Nothing								
For attending with writs and other things out of the office to be produced on trial, for each day's attendance				0	6	8			

For

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For the plaintiff's discharge on every writ of *Fieri facias*, whereon money has been levied, or on a *Capias ad satisfaciend.* executed on the defendant, and on every writ on which the defendant is committed to the gaol		0 2 4	
For searching the books and files, and a warrant to the keeper of *Newgate* to discharge the defendant out of custody.		0 2 4	
N. B. The defendants are oftener discharged out of *Newgate* without paying any fees than with. Copies of writs are given, and searches are made for prisoners in *Newgate* without any fees for the same			
For every search		0 0 4	
For a short copy of a writ in order to put in bail by		0 0 6	
For searching for a writ in force; which is never done but upon the undertaking of some attorney to put in bail thereto		0 1 0	
For a copy of a bill of *Middlesex*, *Capias* or *Quo minus* at length		0 1 0	
For copies of all writs or other things for every sheet of copy wrote		0 0 6	
For executing and returning a writ of false judgment, or *Accedas ad cur'*		0 6 8	

Fees for executing a writ of *Ad quod damnum* cannot well be settled, but must be left to the sheriff and the party to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies, or where the intended fair or market is to be held: which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of partition cannot well be settled for the same reason; and a provision is made by *Stat.* 8 & 9 *W.* 3. *c.* 31. for settling the same in case the sheriffs and the parties cannot agree.

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For attending lord mayor, as conſervator of the river *Thames*; making warrants on the writs of *Capias*, and ſummons and returning the ſame, and for ſummoning, impanelling and returning the grand jury at the firſt court in every year, the water-bailiff pays		1 1 0	
For attending the lord mayor at the ſecond court in every year, and returning the ſummons and *Capias* proceſs, the water-bailiff pays		0 10 6	
For ſummoning, impanelling, and returning the traverſe jury, and attending the trials there, which very rarely happens		0 10 ●	
For returning, ſummoning and impanelling a jury, and attending commiſſioners in a commiſſion out of the *Exchequer* to find debts		0 10 0	
For the like on a forcible entry before two juſtices, which happens but very ſeldom		0 10 0	
For a warrant on a precept for two juſtices to remove the force after ſuch inquiſition taken		0 2 4	

INDEX.

INDEX.

Abatement.

1. NO dilatory plea to be received without an affidavit *Page* 179
2. Affidavit to a plea of infancy. 179
3. Plea in abatement to be pleaded in four days. 179
4. For want of an affidavit to a plea in abatement, plaintiff may ſign judgment. 180
5. Plea: miſnomer in defendant's ſurname. 177
6. Plea: defendant a yeoman, and not a cheeſemonger, 177

Actions.

1. What they are, 2 note (*d*)
2. Real, 1 in notes
3. Perſonal, 2 in notes
4. Mixt, 2 in notes
5. Of commencing actions, 81
6. Of laying actions, 161

See *Crim. Con.* and 636.

Adjournment.

Writ of adjournment. *Page* 73

Adminiſtrators.

1. No bail of an adminiſtrator, unleſs on a *Devaſtavit* returned. 81
2. Declaration in caſe *ſur Aſſumpſit*, at ſuit of an adminiſtrator for money had and received. 291
3. *Scire facias* in debt for an adminiſtrator. 378
4. Entry of a *ſcire facias* in caſe againſt an adminiſtrator. 380
5. *Scire facias* on a judgment recovered in the late king's reign againſt the defendant and his wife, (ſince dead) executrix, defendant adminiſtrator of his wife. Plea, no aſſets, and replication. 401

See *Declarations*, *Error* 10. *Executor*.

Admitting attornies. *Page* 65

Affidavits.

1. Fee for taking them by commiſſioners. 41
2. If bail required, affidavit muſt be made of the cauſe of action, 92
3. The form of the affidavit. 93
4. Affidavits to hold to bail, or of ſervice of proceſs, may be made before plaintiff's attorney if a commiſſioner. 95
5. Of ſervice of proceſs. 106
6. Before whom to be made. 107
7. Of ſervice of a notice of adding and juſtifying bail. 112
8. Miſtakes in declaration may be amended by ſummons, except in ejectment. 616
9. Where bail may juſtify by affidavit. 113
10. Affidavit to be made of the due taking bail by a commiſſioner, &c. 114
11. No dilatory plea to be received without an affidavit. 179
12. Affidavit to a plea of infancy. 179
13. For want of an affidavit to a plea in abatement, plaintiff may ſign judgment. *Page* 180
14. When to be of declaration delivered againſt a priſoner. 320
15. Affidavit of delivery of a declaration againſt a priſoner. 324
16. Affidavit that the cauſe of action is above 10*l.* neceſſary on delivering a declaration as a new charge againſt a priſoner. 327
17. Of the ſervice of a declaration in ejectment. 355
18. Affidavit of ſervice of three ſummonces for the purpoſe of obtaining an order of judge. 609. in notes
19. On a latin bond, the *Alias dict.* if uſed, muſt be in latin. 96

Agent. See Country cauſes.

Amendment.

1. All proceedings, while in paper, are amendable by ſummons, 616 in notes

Appearance.

1. Common Appearances to be entered with the *Filacer*. 106
2. Defendant to appear in eight days. 106

3. Or plaintiff on affidavit of ſervice may appear for him and proceed. *Page* 106
4. The form of the affidavit. 106
5. Before whom to be made. 107
6. The eight days to appear excluſive of the return day. 107
7. Irregularity in plaintiff's entering appearance for the defendant, to be complained of before judgment. 107
8. If plaintiff appears for defendant, he may charge it on the back of the iſſue. 190
9. Of appearing to an attachment of privilege. 286

Arbitration.

See References.

Sir *John Archer.*

1. Singular inſtance of his refuſing to reſign. 6

Argument.

1. No argument on ſpecial verdicts, or demurrer, till paper books delivered. 218
2. In judges books, counſel's names, number roll and day of argument to be ſet down. 228

Arreſt.

1. Obſervations on rule, touching attorney's freedom from arreſt. *Page* 57
2. Plaintiff's bill of coſts on defendant's arreſt. 640
3. Arreſt of judgment. 219

See bills of coſts, *Judgment*, *Motions*, *Verdict.*

Aſſociate.

1. Aſſociate at *Niſi prius* in *London* and *Middleſex*, his appointment and duty. 34, 35.
2. Aſſociate to the chief juſtice to return *Poſteas.* 216

Aſſault.

1. Declaration therein. 153

Attachment.

1. Attachments, *&c.* returnable on a day certain. 79
2. Muſt have 15 days between *teſte* and return. 79
3. Attachment of privilege for an attorney. 285
4. *Præcipe* to be left with the prothonotary at the time of ſigning the writ. 285
5. Attachment for a contempt. 306

See 80. *Declaration* 5.

Attor-

Attornies.

1. No one to act as an attorney, unleſs he ſerved five years clerkſhip. *Page* 42
2. If his maſter die, or the contract be vacated before the five years expired, then to ſerve the remainder of the five years with another attorney. 43
3. Judge to examine his capacity before admiſſion. 43
4. The oath on admiſſion. 44
5. A quaker taking the ſolemn affirmation, may be admitted an attorney. 44
6. Attornies to be inrolled 44
7. No attorney to have more than two clerks at one time; prothonotaries may have three clerks. 45
8. Attorney with conſent of attorney of another court, may practice in ſuch court. 45
9. Attorney permitting one, who is not, to practice in his name, diſabled to practice. 45
10. Attorney may be admitted a ſolicitor. 46
11. Attorney of the *King's Bench* not to be admitted of *C. P.* without a new ſtamp. 46
12. No attorney to commence an action for fees, *&c.* until a month after a bill delivered and ſigned. *Page* 46
13. On application by party chargeable, and ſubmiſſion to pay what due, bill to be taxed, without bringing money into court. 47
14. No action to be brought pending the reference. 47
15. On taxation party to pay what due. 47
16. Attorney to refund if over paid. 47
17. If bill taxed, be leſs by a ſixth, than bill delivered, attorney to pay coſts. 48
18. If otherwiſe, coſts at the diſcretion of the court. 48
19. Not to extend to any bill of fees between attorney and attorney. 48
20. Nor to conveyancing buſineſs. 48
21. On attorney's death, his bill not to be taxed. 48
22. Of application to tax an attorney's bill. 49
23. Penalty of 50*l.* for practiſing as an attorney, not being admitted. 49
24. No attorney being a priſoner to commence or proſecute any action. 49
25. Such attorney to be ſtruck off the roll. 50
26. As alſo any other attorney permitting ſuch attorney to uſe his name. 50

27. Not to extend to ſuits commenced before confinement of ſuch attorney. *Page* 50
28. Suing on a bail-bond given in an action commenced before the impriſonment, is but a continuance of the original ſuit. 50
29. Attornies priſoners may defend, though not proſecute ſuits. 50
30. Every perſon bound clerk to cauſe an affidavit to be made of the due execution of the articles, ſpecifying the names and places of abode of the parties, date, *&c.* 50, 51
31. Affidavit to be filed, and day of filing to be marked thereon. 51
32. No perſon to be admitted an attorney till affidavit read in court. 51
33. Clerk of the warrants to file ſuch affidavits, and enter ſubſtance thereof in a book. 51
34. Fee for ſame 2*s.* 6*d.* 51
35. Book to be ſearched *gratis.* 51
36. No attorney to take a clerk after he has diſcontinued buſineſs. 51
37. Service to a Scrivener though alſo an attorney not good. 51, 52
38. Every perſon ſo bound, to be during the whole time actually employed by ſuch attorney. *Page* 52
39. If before the expiration of the time, the attorney die, *&c.* or the clerk he diſcharged, *&c.* and be bound to ſerve for the remainder of time to another attorney, ſuch ſervice be good. 52
40. So as affidavit he made of the execution of the articles. 53
41. Before admittance of attorney affidavit to be made and filed of actual ſervice. 53
42. Attorney acting as agent, or permitting his name to be uſed for, or ſending any proceſs to any unqualified perſon, thereby to enable him to appear or act as an attorney, to be ſtruck off the roll, and the unqualified perſon to be committed. 53, 54
43. None but attornies to practiſe at ſeſſions, under penalty of 50*l.* 54
44. Like penalty on attorney permitting an unqualified perſon to uſe his name at ſeſſions. 54
45. Attorney not attending, *&c.* to have no privilege. 57
46. Obſervations on their privilege from arreſt. 57

47. Not to be leſſee in ejectment nor bail. *Page* 59, 118
48. No changing attorney without rule or order, and his bill paid. 59
49. Attornies who have diſcontinued, been forejudged, or put out of the roll, not to have writ of privilege or attachment. 61
50. Writ of privilege to be ſigned by the clerk of the warrants. 61
51. Privilege of attorney as to ſuing and being ſued. 61
52. Attorney not bound to ſerve on the militia, or as conſtable, *&c.* 62
53. Attornies to be admitted of ſome of the inns of court, except, *&c.* 62
54. Each attorney to pay 8*d.* a term to the clerk of the warrants. 64
55. Attorney reſtored who had been ſtruck out off the roll at his own requeſt. 64
56. Attorney anſwerable for his agent. 64
57. Matters that may be tranſacted in the country to be by the attorney there, and not by the agent. 64
58. Admitting attornies. 65
59. Attorney not to be held to bail, unleſs for a contempt, *&c.* 85
60. His name to be on copy of proceſs. 91
61. Affidavit to hold to bail, or of ſervice of proceſs, may be made before plaintiff's attorney if a commiſſioner. *Page* 95
62. Attorney's name to be ſubſcribed on every writ for arreſting the body. 104
63. Execution and warrants thereon. 104
64. And on every copy of proceſs to be ſerved on the defendant, but the want thereof doth not make the proceſs void. 91
65. The not ſubſcribing the attorney's name to the warrant doth not vitiate the writ. 105
66. Not to be bail. 59, 118
67. When plaintiff appears for defendant, he may proceed without taking notice of any attorney defendant may have employed. 130
68. Of delivering declaration when defendant's attorney cannot be found. 127
69. Declaration delivered to defendant when his attorney is known, is bad. 132
70. Muſt be delivered to the agent in town, and not to country attorney. 133
71. Attorney laying actions of treſpaſs, *&c.* in foreign counties, unleſs, *&c.* to be ſeverely puniſhed. 161
72. If an attorney ſues by *Capias*, the *Venue* may be changed. 165

73. An attorney defendant not intitled to have the *Venue* changed. *Page* 165
74. Method of entring iſſue againſt an attorney where iſſue is joined in a term ſubſequent to that in which the bill was filed. 191
75. In country cauſes iſſue to be delivered to the agent in town, and not the country attorney, except, *&c.* 65, 192
76. Attorney to enter his warrant of attorney on record. 193
77. Plaintiff's attorney to file his warrant the term he declares, and defendant's attorney the term he appears. 193, 194
78. When notice of trial may be given to the attorney or agent. 197
79. Notice of inquiry not to be given defendant, if his attorney be known. 248
80. To country attorney. 249
81. The form of a writ of inquiry for an attorney. 252
82. Againſt an attorney. 250, 251
83. Proceedings for and againſt attornies. 285
84. Attachment for an attorney. 285
85. *Præcipe* to be left with the prothonotary at the time of ſigning the writ. 285
86. Of appearing and putting in bail thereto. *Page* 286
87. Declaration by an attorney for fees and diſburſements. 287
88. Bill againſt an attorney at the ſuit of an adminiſtrator. 291
89. Bill againſt an attorney on a promiſe to deliver back a watch, or pay, *&c.* 293
90. No bill to be filed till entered on record. 296
91. Of filing a bill againſt an attorney. 296
92. No forejudger till notice in writing. 297
93. Notice of a bill being filed. 297
94. Of forejudging an attorney. 299
95. Memorandum and forejudger. 299, 300
96. A writ of privilege for an attorney iſſued to the palace court. 300
97. Another where an attorney was arreſted on a *Capias ad reſpond*. 303
98. Of getting ſame allowed. 304, 305
99. Bill of coſts on proceedings againſt an attorney. 307
100. Summons for attorney to deliver client his bill. 613

Awards.

1. Of drawing up, executing, and delivering award. *Page* 607
2. Of tendering award. 607
3. Of attachment for not performing award. 608
4. Of contempt thereon. 608
5. Award is deciſive between the parties. 607 in notes
6. Of coſts of reference. 607 in notes

Bail.

1. RECognizance of bail taken by commiſſioners to be tranſmitted to a judge, with affidavit of the due taking. 40, 41
2. Commiſſioners fee for taking ſame. 41
3. The judges to make rule for juſtifying, &c. 41
4. The ſame to be by affidavits taken before a commiſſioner, unleſs taken within ten miles of *London* or *Weſtminſter*. 41
5. Any judge of aſſize may take ſuch bail. 42
6. Acknowledging bail in the name of any other not privy or conſenting, felony. 42
7. Attorney not to be bail. 49, 59, 118
8. A *Ca. Sa.* to make bail liable, muſt have 15 days between the *Teſte* and return. *Page* 80
9. No bail of an heir, nor of an executor or adminiſtrator, unleſs on a *Devaſtavit* returned. 81
10. Nor on a penal ſtatute. 81
11. Nor on a bail-bond, or recognizance of bail. 81, 82
12. In battery, conſpiracy, or falſe impriſonment, bail of courſe. 82
13. No bail for a malicious proſecution where the plaintiff was acquitted upon a defect in the indictment. 82
14. Bail by order for criminal converſation. 82
15. Bail in an action for meſne profits. 82
16. Bail in treſpaſs for entering plaintiff's hop-ground, and taking away his hop-poles. 82, 83
17. No bail in ſlander, except ſlander of title. 83
18. Nor in covenant unleſs for payment of money, or damages aſcertained by affidavit, in bankrupt caſe. 83
19. Bail in debt on a judgment, if no bail in the original action; *aliter* if bail on the original action. 83
20. The like though error brought on the judgment, and

and bail put in on the writ of error. *Page* 84
21. Hard *female* caſe relative to bail. 85
22. Priſoner diſcharged, not to be held to bail in debt on the judgment. 85
23. Action againſt baron and feme, and wife only arreſted, ſhe ſhall be diſcharged on common appearance; *aliter* if both arreſted. *Sed Qu.* and ſee 85
24. Attorney not to be held to bail, unleſs for a contempt, *&c.* 85
25. Seamen and ſoldiers when to be held to bail. 86
26. No bail if cauſe of action amounts not to 10*l.* but defendant to be ſerved with copy of proceſs. 86
27. No bail in *Wales* or county palatine, unleſs affidavit be made of cauſe of action, and ſame amounts to 20*l.* or upwards. 86
28. Nor on diſcontinuance, 87 *quere* nor after nonſuit in B. R. *id.*
29. If bail required, affidavit muſt be made of the cauſe of action. 92
30. The form of the affidavit. 93
31. Before whom to he made. 95
32. How affidavits ſhould be penned in order to hold to bail. 94, 95
33. Affidavit to hold to bail, or of ſervice of proceſs, may be made before plaintiff's attorney, if a commiſſioner. *Page* 95
34. Matter of bail examinable by the court. 95
35. On a dangerous battery bail may be had on an affidavit and judge's order. 99, 100
36. Where debt 10*l.* or upwards, affidavit to be made and ſum ſworn to, and indorſed on the writ. 104
37. In *London* and *Middleſex* four days to put in bail. 108
38. In any other city or county eight days. 108
39. If in town, to put in bail before a judge at his chamber. 108
40. To be entered with the proper filacer. 108
41. How on a *Teſtatum Capias*. 108
42. The form of a recognizance of bail before a judge. 109
43. Notice of bail put in. 110
44. Exception to the bail to be entered, and notice given. 110
45. Or elſe in 20 days, bail abſolute. 110
46. Bail excepted to muſt juſtify in four days, or other bail

bail added, who, &c. *Page* 110, 111
47. Notice to be given of adding or juſtifying. 111
48. Notice of bail added and juſtifying. 111
49. Affidavit of the ſervice of the notice. 112
50. Expence of putting in bail, adding and juſtifying. 112
51. Judge may appoint commiſſioners to take bail, and the recognizance to be tranſmitted to one of the judges. 40, 113
52. Fee for taking recognizance 2*s*. 113
53. Judges of aſſize may take recognizance of bail. 113
54. Where bail may juſtify by affidavit. 113
55. Bail put in before a judge muſt juſtify in perſon. 113
56. Of putting in bail before a commiſſioner. 114
57. The recognizance and condition. 114
58. Affidavit to be made of the taking ſuch bail. 114
59. Bail taken by a commiſſioner within 40 miles of *London* to be tranſmitted in 10 days, above 40 miles, in 20 days, unleſs, &c. 115
60. And filed with the proper officer, or plaintiff may proceed on the bail-bond, and defendant not ſuffered to plead in the original action but on payment of coſts. *Page* 115
61. No bail to be received or filed unleſs tranſmitted within the time aforeſaid. 116
62. If not filed in time, application muſt be made to the court, no leave in the treaſury. 116
63. Notice of ſuch bail to be given in four days. 116
64. Name of defendant, and his bail, to be entered in commiſſioners book, where plaintiff's attorney to ſearch. 116
65. Exception to be within twenty days after bail tranſmitted and notice, and then better bail, or bail to juſtify. 116
66. Bail excepted to, to be perfected in four days. 117
67. Additional bail are to juſtify though not excepted to. 117
68. Bail excepted to in the vacation to juſtify within the firſt four days of next term. 117
69. What notice of juſtifying. 117
70. Bail cannot juſtify, unleſs bail before notice thereof. 118
71. No attorney to be bail. 118
72. No

72. No ſheriff's officer to be bail. *Page* 118
73. Of aſſigning the bail-bond 118
74. Sheriff on requeſt to aſſign bail-bond to plaintiff. 118
75. Who may bring an action in his own name. 118
76. When bail-bond may be put in ſuit. 118
77. Rule for ſheriff to return writ. 120
78. The like to bring in the body. 120
79. Meaning of rule explained 120 in notes
80. Sheriff not returning writ within ſix days after rule to pay coſts. 120
81. Where an action lies againſt him for a falſe return. 120
82. If the ſame bail be put in above as was given to the ſheriff, the plaintiff may except, and proceed on the bail-bond notwithſtanding, if the bail do not juſtify. 120, 121
83. One bail eſteemed as no bail. 105
84. Whether defendant can ſurrender till bail is complete. 122
85. Debt on recognizance of bail, writ to be ſerved four days before the return. 122
86. What time to ſurrender thereon. 122
87. No action on a recognizance of bail pending a writ of error on the original judgment. *Page* 123
88. When bail may ſurrender on a *ſcire facias*. 123
89. Bail bound by death of defendant if *Ca. Sa.* returned. 123
90. *Ca. Sa.* in order to charge the bail ſhould be in the ſheriff's office four days. 123
91. And have fifteen days between *Teſte* and return. 123, 124
92. Bail loſt, if declaration differs from writ. 124, 126
93. Bad, if returnable pending a writ of error. 124
94. Bail cannot be a witneſs for defendant. 124
95. Bail jointly and ſeverally for 140 *l.* verdict for 300 *l.* each ſhall pay 140 *l.* 124
96. Whether the delivering a declaration *de bene eſſe*, and proceeding thereon, will be a waiver of exception to bail. 131
97. Of putting in bail to an attachment of privilege. 285

Bail on Habeas Corpus.

1. Taken in abſence of plaintiff or his attorney, to be *de bene eſſe*, and filed, if no except-

exception, within 20 days. *Page* 314
2. If no exception, and bail not filed in four days after the twenty, a *Procedendo*. 314
3. Bail taken of a priſoner to be delivered to the prothonotary to be filed. 315
4. But priſoner not to be diſcharged till bail aſſented to. &c. 315
5. Bail in all caſes of removal where bail below, except, &c. 315
6. Rule for *Procedendo*, unleſs bail in four days in term, and in ſix days in vacation. 315
7. Rule for better bail. 315
8. Of juſtifying. 315
9. *Scire facias* againſt bail. 392
10. *Scire facias* againſt bail on a *Habeas Corpus*, taken by a commiſſioner defendant in priſon. 395
See bills of coſts.

Bail-bond.

1. If bail taken by a commiſſioner not filed within, &c. plaintiff may proceed on the bail-bond, and defendant not to be ſuffered to plead in original action, but on payment of coſts, &c. 115
2. Of aſſigning bail-bond. *Page* 118, 624
3. Sheriff on requeſt to aſſign bail-bond to plaintiff. 118
4. Who may bring an action in his own name. 118
5. When bail-bond may be put in ſuit. 119
6. If ſame bail be put in above as given to the ſheriff, the plaintiff may except, and proceed on the bail-bond notwithſtanding, if the bail do not juſtify. 121
7. Of ſtaying proceedings on the bail-bond. 121
8. Action muſt be brought thereon in ſame court action was commenced. 119
9. Bail-bond not void, penalty exceeding double the ſum due. 119
10. Of ſtaying proceedings thereon. 119, 121, 637

Bailiff.

Not to be bail. 118

Bankrupt.

Order of *Superſedeas* to diſcharge bankrupt, priſoner will be made on *firſt* ſummons. 612 in notes

Baron

Baron and feme.

1. Action againſt both, and wife only arreſted, ſhe ſhall be diſcharged on a common appearance; *aliter* if both arreſted. *Sed. Qu.* *Page* 85
2. Proceſs againſt both; ſervice on the huſband ſufficient. 91

Bill.

1. Of filing a bill againſt an attorney, and calling him in court. 296
2. No forejudger till notice in writing. 297
3. Notice of a bill filed. 297
4. Bill againſt an attorney at the ſuit of an adminiſtrator *ſur aſſumpſit* for money had and received. 291
5. No bill to be filed till entered on record. 297
6. Of filing a bill againſt a Peer or Member of parliament. 597

Bills of Coſts.

1. Bill of coſts on proceedings againſt an attorney. 307
2. Bill of coſts on proceedings againſt priſoners. *Page* 337
3. Bill of coſts of *Superſedeas* to diſcharge priſoner out of cuſtody. 339
4. Bill of coſts for defendant in ejectment. 374
5. Bill of coſts on error brought in exchequer chamber. 437
6. Bill of coſts for plaintiff in replevin. 446
7. Bill of coſts for defendant in replevin. 449
8. Bill of diſburſements and fees on fine paſſed by *De. Po.* 472
9. Bill of fees and diſburſements on ſuffering a common recovery. 505
10. Bill of coſts on proceedings againſt parliament men. 601
11. Bill of coſts on motion to ſet aſide judgment. 628
12. Plaintiff's bill of coſts on defendant's arreſt. 640
13. Defendant's bill of fees *&c.* on putting in bail. 644
14. Bill when cauſe tried by ſpecial jury. 646
15. Bill on entring ſatisfaction on judgment. 647

Capias ad reſpondendum:

1. IN treſpaſs. 88
2. In debt. 96

3. In treſpaſs with an *ac etiam* in debt. *Page* 98
4. In treſpaſs with an *ac etiam* in caſe upon promiſe. 99
5. *Teſtatum.* 101, 102
6. *Non omittas.* 103
7. Amended, 80

See *Præcipe and Proceſs.*

Capias by continuance. 103

Capias ad ſatisfaciendum.

1. Need not have 15 days between the *Teſte* and return, except to ground an exigent, or make bail liable. 80
2. To charge bail muſt lie four days in the ſheriff's office. 123
3. And have 15 days between *Teſte* and return, 123, 124
4. *Ca. ſa.* what. 258
5. If defendant dies in execution, plaintiff may have execution againſt the land or goods. 260
6. If part levied on *Elegit*, a *Ca. ſa.* lies for the reſidue. 260
7. *Ca. ſa.* in debt 262
8. In treſpaſs on the caſe. 263
9. *Sur aſſumpſit.* 263
10. Breach of covenant. 263
11. Treſpaſs and aſſault. 263
12. Treſpaſs. *Page* 264
13. In ejectment for damages. 264
14. In replevin. 264
15. For words. 264
16. *Teſtatum Ca. ſa.* 264
17. *Ca. ſa.* after *Sci. fac.* 264
18. *Teſtatum ca. ſa.* after *Sci. fac.* by an adminiſtrator *durante minori ætate* of an executor. 265
19. *Teſtatum Ca. ſa.* for the reſidue after a *Fi. fa.* in debt. 266
20. *Ca. ſa.* againſt two where ſeveral damages by inquiry in treſpaſs and aſſault. 267
21. Upon a nonſuit in debt. 267
22. *Teſtatum Ca. ſa.* of privilege for an attorney againſt an attorney in debt. 268
23. *Teſtatum Ca. ſa.* by a ſurviving plaintiff againſt an attorney in debt after *Sci. fac.* 269
24. *Teſtatem Ca. ſa.* againſt bail after *nulla bona* returned on a *Fi. fa.* 269
25. *Teſtatum Ca. ſa.* againſt an executor after a *Devaſtavit* and *nulla bona* returned. 271
26. *Ca. ſa.* for damages againſt an executor after *nulla bona propria* returned. 273

27. *Ca. ſa.* in caſe at the ſuit of an executrix. *Page* 274

See *Execution.*

Cauſes.

Records in cauſes entered for *firſt* day of ſittings *after* term, muſt be left with marſhal by ſeven o'clock of preceeding evening. *Pref.*

Certiorari.

1. What. 3 in notes
2. To the judges of the palace upon an action brought on a judgment in that court. 519

Chief Proclamator.

His appointment and duty. 36, 37

Chirographer.

His appointment and duty. 30

Clerk of Aſſize.

To return *Poſteas.* 216

Clerks of the Dockets.

Their appointment and duty 18

Clerk of the Errors.

His appointment and duty. *Page* 33

Clerk of the Eſſoins.

1. His appointment and duty. 26
2. To lay before the court what rolls are wanting. 257

Clerks to the Judges,

Their appointment and duty. 33

Clerks of the Judgments

Their appointment and duty. 17

Clerk of the Juries.

His appointment and duty. 27

Clerk of the King's Silver.

His appointment and duty. 28, 29

Clerk of the Outlawries.

His appointment and duty. 31.

Clerk

Clerk of the Papers and Rules of the Fleet Priſon.

His appointment and duty. *Page* 38

Clerk of the Return Office and Office for Inrolment. 27, 28

Of writs for fines and recoveries. 27, 28

Clerks of the Reverſals.

Their appointment and duty. 19

Clerk of the Treaſury and Clerks of the Jurats, or under Clerks of the Treaſury and Treaſury Keeper.

Their appointment and duty. 20, 21

Clerk of the Warrants, Inrolments and Eſtreats.

His appointment and duty. 24

Cognovit Actionē.

1. In debt. 236, 237
2. In debt on a bond. 237
3. With a *relicta verificatione* after *per minas* pleaded. 238
4. The like after *non eſt factum* pleaded. 239

ſee 638

Commiſſioners for taking Affidavits.

1. Their appointment and duty. *Page* 39, 40
2. Affidavit to hold to bail, or of ſervice of proceſs, may be made before plaintiff's attorney, if a commiſſioner. 95

Commiſſioners for taking bail.

Their appointment and duty. 40, 96

Conciliums. See Motions 6.

Continuance.

Capias by continuance. 103

Coſts.

1. Of coſts in ejectment. 356
2. No coſts on a *Scire facias* till plea. 407
3. Double coſts of judgment after verdict affirmed in error. 428
4. Of coſts on cauſe being made a *remanet* at aſſizes. 211, 212
5. See *Bills of Coſts* and *Meaſure of Coſts* in 635

Covenant.

No bail in covenant unleſs for pay-

payment of money, or damages aſcertained by affidavit. *Page* 83

County Palatine.

1. When bail in a county palatine. 86, 87
2. Of ſerving proceſs there. 90

Country Cauſes.

1. Country attorney anſwerable for agent. 64
2. Where country attornies are concerned, proceedings ſhould not be delivered in country, but by agents in town. 64, 178
3. Declaration muſt be delivered to and demanded of agent in town, and not of attorney in country, and no agreement can alter this practice. 64, 133
4. If agent gives time to plead, country attorney cannot ſign judgment till ſame be expired. 65
5. Plea delivered in country irregular. 65
6. Iſſue muſt be tendered in town and not delivered in country. 65, 129. except. See *id.*
7. Notice of trial muſt be given in town, but countermand may in country. 65
8. Eight days notice of executing writ of inquiry. 246
9. Notice to country attorney. 249
10. Notice in country ejectments. 354
11. In country cauſe in ejectment, where declaration is of Trinity term, notice may be good to appear in next *Hilary*, (paſſing over *Mich.)* term, tho' not uſual practice, *Page* 341 in notes
12. Where cauſe of action in country cauſes is local, and cannot be tried but at aſſizes, judge will be governed in his orders for ſame, as aſſizes happen; if cauſe of action is tranſitory doctrine as in town cauſes. 615

Court.

1. It's juriſdiction. 1
2. It's officers. 11, *&c.*

Court Keeper.

His appointment and duty. 37

Criers of the Court.

Their appointment and duty. 36, 37

Crier at Niſi Prius *in* London *and* Middleſex.

His appointment and duty. *Page* 36

Criminal Converſation.

1. No bail unleſs by order. 63
2. Full coſts. 630
3. Trial at bar. 631
4. Proof of marriage. 631
5. Evidence. 632
6. Plea under ſtatute of limitations. 632

Cuſtos Brevium.

His appointment and duty. 11

Debt.

1. BAIL in debt on a judgment if no bail in the original action; *aliter* if bail in the original action. 71
2. The like, though error brought on the judgment and bail be put in on the writ of error. 71

Declaration.

1. Declaration muſt be demanded of agent, and not of country attorney. 64
2. May declare on a *clauſum fregit* in any county, or for any cauſe of action. *Page* 87, 125, 126
3. *Summonitus* and *attachiatus* their difference. 125
4. On a *clauſum fregit*, or a *clauſum fregit* with an *ac etiam*, may declare in any county. 126
5. On a *Præcipe quod reddat* muſt declare in debt, except it be by the bye. 126
6. The like on an attachment of privilege. 126
7. On a declaration at ſuit of *Baron and Feme*, the huſband cannot declare by the bye at his own ſuit. 126
8. Declaration by the bye when to be delivered. 126
9. Of delivering declaration. 127
10. Of delivering declaration when the defendant's attorney cannot be found. 127
11. Plea to be demanded in writing. 127
12. Plaintiff has till the end of the ſecond term to deliver his declaration. 128
13. Defendant at the end of the ſecond term may give a rule to declare. 128
14. Declaration to be demanded in writing. 128
15. For want of declaration *Non Proſs* may be ſigned. 128
16. Declaration to be demanded of the agent, and not

not of the country attorney. *Page* 64, 128
17. Where no rule, the plaintiff hath till the eſſoin day of the third term to declare. 128, ſee 129
18. Plaintiff hath two terms to declare after bail complete. 129
19. Where the plaintiff appears for the defendant, the declaration to be left in the office, and notice left for defendant at his laſt place of abode. 129
20. Declaration well delivered from time of notice. 129
21. And if defendant doth not plead, plaintiff may ſign judgment without further calling for a plea. 129
22. Where plaintiff appears for defendant, he may proceed without taking notice of any attorney defendant may have afterwards employed. 130
23. When defendant ſhall plead in four days. 130
24. When declaration may be delivered *de bene eſſe*. 130
25. When defendant hath eight days to plead. 130
26. Such declaration to be delivered with notice when to plead. 131
27. The four or eight days to plead are incluſive, and the notice may be given accordingly. *Page* 130
28. Declaration may be delivered *de bene eſſe* before time for bail or appearance expired. 131
29. Whether declaration *de bene eſſe* and proceedings thereon will be a waiver of exception to bail. 131
30. On declaration *de bene eſſe* judgment cannot be ſigned till appearance entered. 131, 132
31. Indorſement on declaration *de bene eſſe*. 132
32. Declaration to be delivered four days excluſive before the end of the term. 132
33. All declarations muſt be delivered before nine o'clock in the evening. 132
34. Declaration delivered to defendant, his attorney being known, is bad. 132
35. Muſt be delivered to the agent, not to the country attorney. 133
36. Declaration is only well delivered from the time of notice. 133
37. Notice to plead in four days when it ſhould be eight, irregular. 133
38. What declarations cannot be conſolidated. 133
39. Notice need not ſet forth the whole declaration. 133
40. Ir-

40. Irregularity in delivering declaration to be complained of two days before executing inquiry. *Page* 134
41. Leave to amend declaration, but not to withdraw ſame and declare *de novo.* 134
42. Declaration in dower. 507
42. Debt on a judgment. 228, 512
43. Debt by an adminiſtrator *de bonis non* on a judgement recovered by the teſtator. 514
44. On bond. 135
45. On a *Mutuatus.* 136
46. *Indeb.* as for monies lent. 137
47. —— for monies had and received to plaintiff's uſe. 138
48. ——for monies laid out. 139
49. Declaration on an inland bill of exchange. 139
50. ——— on a promiſory note. 141
51. ——for the uſe and occupation of an houſe. 145
52. *Indeb. aſſ.* for work done and materials found. 148
53. Declaration for not repairing fences. 149
54. Debt on a judgment in the palace court. 518
55. Declaration on a *Scire facias* upon a judgment recovered in the late king' time againſt the defendan and his wife (ſince deceaſed) executrix, defendant being now adminiſtrator of his wife, and adminiſtrator *de bonis non* of her teſtator. *Page* 401
56. Declaration on a *Scire facias* upon a judgment for aſſets *in futuro* againſt an executrix. 404
57. Declaration in debt *qui tam* on ſtatute 8 *Ann. c.* 9. §. 35. for not inſerting in indentures of apprenticeſhip the full ſum received, 531
58. Debt *qui tam* on the ſtatute for keeping a greyhound and killing a hare, not being qualified. 582
59. Declaration in prohibition. 563
60. Declaration againſt a hundred on the ſtatute of hue and cry. 572
61. Debt on a bond. 135
62. Debt on a *mutuatus.* 136
63. Debt on a bond by an executrix againſt the heir of the obligor. 520
64. Debt on a bond by a ſurviving obligee. 523
65. Debt on a bond by an executor. 524
66. Debt on a bond againſt an executor. 525
67. Debt on a bail-bond at the ſuit of an attorney. 527

68. Debt

68. Debt for rent reſerved by indenture at the ſuit of the heir. *Page* 566
69. The like againſt an aſſignee. 568
70. Debt againſt the ſheriff for an eſcape. 535
71. Declaration on a bill of exchange. 139
72. Declaration on a promiſſory note. 141, 294
73. Declaration in caſe on a policy of inſurance. 537
74. *Indeb. aſſ.* for goods ſold and delivered. 142, 295
75. *Quant. val.* thereon. 295
76. *Indeb. aſſ.* for money lent. 137
77. ——— for money had and received. 138
78. ——— for money laid out. 139, 147
79. ——— for the uſe and occupation of a houſe. 145
80. *Quant. meruit* thereon. 146
81. ——— for the uſe of horſes, coach, *&c.* and attendance of ſervants. 242
82. *Quant. meruit* thereon. 243
83. ———for work and materials. 148
84. *Quant. meruit* thereon. 149
85. *Indeb. aſſ.* by an adminiſtrator for money had and received in life of inteſtate. 291
86. *Ind. aſſ.* at the ſuit of an attorney for fees and diſburſements. *Page* 287
87. *Quant. meruit* thereon. 288
88. ——— for the charges of a funeral. 410
89. *Quant. meruit* thereon. 411
90. Caſe againſt an innkeeper for loſing a horſe belonging to his gueſt. 551
91. Caſe for dilapidations, not repairing a chancel, *&c.* 560
92. Caſe for not repairing fences. 149
93. Caſe for inticing away and detaining plaintiff's apprentice. 555
94. Declaration for taking and detaining plaintiff's wife. 558
95. ———for carrying away plaintiff's wife, goods and chattels. 558
96. ——— for criminal converſation with plaintiff's wife. 559
97. *Inſimul computaſſet.* 144
98. Caſe on a ſpecial promiſe to deliver back a gold watch, or pay fourteen guineas by a certain day. 293
99. Caſe on *Aſſumpſit* to deliver goods according to agreement, earneſt being given. 542
100. Caſe *ſur aſſumpſit* to pay

for a gelding let to a third perſon if he did not return it. *Page* 543
101. Caſe at the ſuit of an infant by his *Prochein Amy* againſt a ſheriff for a falſe return, whereupon the plaintiff was arreſted on attachment for a reſcous. 545
102. Caſe for unſkilfully managing a ſhip, whereby ſhe ran againſt a lighter and damaged the plaintiff's goods therein. 550
103. Declaration in ejectment of five chambers and a kitchen. 361
104. ——— of five meſſuages. 341
105. ———of manors, meſſuages, barns, ſtables, &c. 344
106. ——— on a double demiſe. 347
107. Treſpaſs for breaking plaintiff's cloſe. 152
108. Treſpaſs for entring and hunting in plaintiff's chaſe or warren, and killing the game. 554
109. Declaration for ſhooting a greyhound. 584
110. ——— in aſſault. 153
111. ——— in trover. 153
112. ——— in trover by aſſignees of commiſſioners of bankruptcy. 544
113. Calling defendant adminiſtrator in declaration is ſufficient, without alledging adminiſtration was committed to him. *Page* 380
114. Of declaring againſt priſoners. See *Priſoners* and 314, 319
115. Miſtakes in declaration, may be amended by iſſue. 616

Deeds.

Of inrolling them. 632

Demands.

All demands muſt be made before nine o'clock in the evening. 132

Demurrer.

1. Paper books in demurrers how to be delivered. 217
2. No argument till books delivered. 218
3. If either ſide neglect, the other ſide may deliver all the books. 218
4. And be reimburſed by the attorney making default. 218
5. If not paid before judgment to be allowed in coſts. 218
6. If no coſts, attachment againſt attorney making default. 218
7. General demurrer to a declaration,

claration, joinder, *concilium.* *Page* 220
8. Special demurrer to a declaration at the ſuit of an attorney; day for plaintiff to join in demurrer; plaintiff makes default: Judgment for the defendant. 221
9. Demurrer to a declaration for not alledging that adminiſtration was granted to defendant. 223, 224
10. General demurrer to a plea and joinder. 223
11. Special demurrer to a plea of *Nil debet* on a bail-bond, and joinder. 224
12. Demurrer to a replication and joinder. 225
13. Demurrer to a rejoinder and joinder. 226
14. Of going to argument on demurrer. 227
15. Of delivering the paper books. 227
16. Where in caſes of demurrer defendant's attorney obliged to accept notice of inquiry. 228
17. In judges books counſels names, number roll and day of argument to be ſet down. 228

Dies non juridici. 79

Diſtringas.

1. Of ſuing out *Diſtringas* againſt a peer or member of parliament for non-appearance. *Page* 598, 599, 600
2. Order of court enquiring the appearance of either, may be enforced by *Diſtringas.* 598

Diſtringas juratores.

Where it need not have 15 days between the *Teſte* and return. 80

Docketting. See *Rolls.*

Dower.

1. Count in dower. 507
2. Judgment by *Nil dicit.* 507
3. Writ of ſeiſin and inquiry awarded. 507
4. Defendant by guardian ſays he was always ready to render dower. 509
5. Imparlance, judgment and writ of ſeiſin and inquiry awarded. 509
6. Plea in dower, huſband not ſeiſed. 511

Ejectment.

1. ATTORNEY not to be leſſee in ejectment. 59
2. Ejectment is a fiction, and in breaſt of court. 340 in notes
3. Nomi-

3. Nominal plaintiff cannot releaſe. *Page* 340 in notes
4. Caſual ejector cannot bring error. 340 in notes
5. Attorney ordered to *Non pros* ſuch a writ, at his own expence, and pay coſts. 340 in notes
6. Of commencing the action. 540, 541
7. Tenant in poſſeſſion may be admitted to defend title, on entering into common rule. 341
8. Precedents of declarations. 341, 344, 347
9. Judgment refuſed upon declaration intituled *Trin.* term 17 *Geo.* II. inſtead of 16 and 17 *Geo.* II. 341
10. In country cauſes, where declarations are of *Trinity* term, notice may be to appear in next *Hilary*, (paſſing over *Mich.*) term, tho' not uſual practice. 341 in notes
11. Rule for judgment of lands in Wales. 341 in notes
12. One meſſuage or tenement too uncertain. 342
13. Demiſe is never amended without conſent. 342, 616 in notes
14. Form of notice to tenant in poſſeſſion. 343, 346
15. Declaration is firſt proceſs. 344
16. Notice to appear in beginning of *Mich.* term, in *London* ſufficient, being vacant poſſeſſion. 343 in notes
17. Notice ſubſcribed by nominal plaintiff, inſtead of caſual ejector, bad. 344 in notes
18. Appearance ſhould be entered of term mentioned in notice. 346 in notes
19. Sixteen iſſues conſolidated into one. 349
20. Demiſe may be laid on a day after term declaration is of. 349
21. Intent of ſigning judgment againſt caſual ejector. 349 in notes
22. Difference between judgment obtained by default againſt caſual ejector, and on verdict againſt defendant. 349 in notes
23. No judgment againſt caſual ejector, without motion and notice to tenant in poſſeſſion. 350
24. To whom declaration may be delivered.
25. Contents of declaration and notice muſt be ſignified and explained at time of ſervice. 350
26. Service of declaration muſt be on premiſſes in queſtion, except in caſe of ſerving tenant perſonally. 351
27. In

27. In what caſes tender of declaration, and refuſal, muſt be proved or confeſſed. *Page* 351, 352
28. Service of declaration where tenant abſconds or ſecretes. 351
29. What tender good ſervice. 351
30. Service of a lunatic. 352
31. Service in ejectment for pariſh poor houſe. 352, 353
32. Tenant in poſſeſſion to have notice to appear beginning of enſuing term. 353
33. Within what time motion for judgment muſt be made. 353
34. Rule of *Trin.* term 32 *Car.* II. relates only to ſervice of tenants in poſſeſſion. 353
35. Ejectment on vacant poſſeſſion, in *London* or *Middleſex*, on ſtat. 4 *Geo.* II. chap. 28. may be moved at any time in term, 353, 365
36. No inſtance, in caſe of vacant poſſeſſion, except ſame be within 4 *Geo.* II. chap. 28. in which any perſon claiming title hath been let in to defend; for he who can firſt ſeal a leaſe on premiſſes, may obtain poſſeſſion, and any other perſon claiming title, may eject him if he can; and no defence can be made in this caſe, but by real ejector. *Page* 353, 354
37. Declaration muſt be delivered before Eſſoin day of term. 354
38. Notice in country ejectments.
39. In *London* and *Middleſex*. 354
40. Of pleading *ancient demeſne*. 354
41. Motion for judgment. 355
42. Affidavit of ſervice of declaration. 355
43. Affidavit on wives of *A.* and *B.* who or one of them are tenants, *&c.* not ſufficient. 355
44. Nor on *A. B.* tenant, or *C.* his wife. 355
45. But on wife of tenant in poſſeſſion, as ſhe informed deponent, which information he verily believes to be true, ſufficient. 355
46. Affidavit of ſervice of declaration ſworn before plaintiff's attorney, as a commiſſioner, irregular. 355, 356
47. Expences of motion for judgment. 356
48. Rule for judgment againſt caſual ejector. 356
49. Secondary not to receive declaration, unleſs ſigned by ſerjeant. 357
50. Se-

50. Secondary on requeſt to ſhew his alphabetical table of ejectments. *Page* 357
51. Of ſigning judgment againſt caſual ejector. 357
52. Of tenant's appearing. 357
53. Appearance though entered after firſt four days, is conſidered as of firſt day of term. 357 in notes
54. Appearance muſt be entered with filacer, and rule marked by him before left in Common Pleas office. 358
55. Form of common rule. 355, 356
56. Plea with name of plaintiff's leſſor, inſtead of that of nominal plaintiff, properly intitled. 360
57. Of the conſent rules. 360
58. Where ſeveral defendants, and ſome refuſe to confeſs leaſe, entry, *&c.* 360
59. If iſſue not paid for, judgment againſt defendant.
60. *Niſi prius* record. 361
61. *Poſtea.* 364
62. Of new trials. 365
63. Of coſts. 365
64. Where leaſe muſt be actually ſealed on premiſſes. 364
65. Where fixing declaration on door of houſe ſhall be legal ſervice. 364
66. Of ejectment for rent. *Page* 365
67. Rent and coſts brought into court proceedings to ſtay. 365
68. Of recognizances in error, in value of two years profits, *&c.* 365
69. On vacant poſſeſſion may move for judgment any time in term. 353, 365
70. Forfeiture of tenant ſecreting declaration. 366
71. Landlord empowered to make himſelf defendant. 366
72. Landlord explained. 366, 367
73. Landlord cannot be *made* defendant, without tenant, though he refuſes to appear, but may be *added* to him. 367
74. When motion for landlord to defend may be made. 367 in notes
75. Tenant not obliged to appear and defend, though landlord offers to indemnify him, but time for appearance inlarged. 367
76. Reaſon of judgment againſt caſual ejector, in caſes where landlord is permitted to defend without tenant. 367
77. Landlord is to enter into common rule by conſent; before 2 *Geo.* II. chap. 19.

he

he might have been added defendant; he is conſidered as tenant in poſſeſſion. 367
78. Impoſition at court by landlord reſented. 368
79. Rule for execution, in what caſe abſolute in firſt inſtance, and not *niſi*. 368
80. Rule *niſi* for ſetting aſide *Non pros.* for not confeſſing leaſe, *&c.* ordered on payment of coſts, though regular. 368, 369
81. Writ of reſtitution granted. 369
82. What proceeding is a fraud, and not contempt of court. 369
83. *Hab. Corp.* and not *certiorari* proper proceſs to remove ejectment from inferior court. 369
84. Form of *hab. fac. poſſ.* 370
85. Form of *hab. fac. poſſ.* and *fi. fa.* 370
86. *Hab. fac. poſſ.* for executor. 371, 372.
87. *Hab. fac. poſſ.* defendant not putting in bail in error, held regular. 372, 373

Elegit.

1. —— what. 261
2. If only part levied, *Ca. ſa.* lies for the reſt. 260
3. —— in debt. 280
4. —— in treſpaſs. 282
5. —— after *Sci. fa.* 282
6. Elegit on a judgment by *Sci. fa. quare dampna aſſideri non debent poſt mortem querentis port. per executricem.* *Page* 283
7. May have many elegits. 284

Error.

1. Bail in debt on a judgment if no bail in the original action, though a writ of error be brought on the judgment, and bail be brought on the writ of error. 83
2. A writ of error. 426
3. Of allowing it. 427
4. Writ of error no *Superſedeas* on any ſingle bond for debt, bond conditioned for payment of money only, debt for rent, or on any contract, unleſs bail put in to proſecute with effect, pay debt, *&c.* and coſts for delay of execution. 427, 428
5. Error, no *Superſedeas* after verdict on action, on ſtat. 2 *Edw.* VI. Promiſe for payment of money, trover, covenant, detinue and treſpaſs, unleſs bail as aforeſaid. 428
6. On writ of error after verdict double coſts if judgment affirmed. 428

7. Error, no *Superſedeas* after verdict in any perſonal action, unleſs bail as aforeſaid. *Page* 429
8. Nor after verdict in dower or ejectment, unleſs plaintiff in error be bound, *&c.* 429
9. On affirmance, diſcontinuance or nonſuit, to pay coſts. 429
10. On affirmance, *&c.* writ to inquire of the meſne profits, *&c.* 429
11. Not to extend to executors, *&c.* penal ſtatutes, *&c.* nor indictments, *&c.* 430
12. In what penalty recognizance ſhall be taken on a writ of error, after verdict on ejectment or dower. 430
13. No bail in error on bond for performance of covenants, tho' the condition did not appear on record. 430
14. Bail in error on judgment upon bond, for payment of money mentioned in a mortgage. 431
15. No bail required in error brought by bail in error. 431
16. No execution *Non obſtante errore*, without certificate of *Non proſs* ſigned. 431
17. Writ of error to be delivered to the clerk of the errors, till then no ſtay of execution. *Page* 431
18. Writ of error *Superſedeas* only from delivery to clerk of errors. 431
19. Where bail required, bail to be put in in four days, *aliter* execution. 431
20. Bail to be perfected in four days after exception. 431
21. No execution for not tranſcribing without certificate. 432
22. Of perfecting bail on rule for better bail in vacation. 432
23. Time for perfecting bail refuſed, no real error being aſſigned. 432
24. Execution after error, tho' before notice, void. 432
25. Debt on judgment after error. 432
26. Pending error no *exigent* poſt *Ca. Sa.* on original judgment. 433
27. Debt on judgment pending error, plaintiff may proceed to judgment, but can't have execution if defendant applies. 433
28. Debt on recognizance againſt bail pending error, proceedings ſtayed. 433
29. If writ of error abates by the death of the chief juſtice, execution with the leave of the court. 433, 434
30. Of tranſcribing. 434
31. What

31. What time clerk of the errors takes to tranſcribe. *Page* 434
32. Bail cannot juſtify in court, unleſs bail before notice thereof. 118
33. Leave to file warrants of attorney after error denied. 434, 435
34. Warrant of attorney amended after error brought. 435
35. Record amended after error brought. 435
36. The like on payment of coſts, if plaintiff in error did not proceed. 435
37. No diſcontinuance after error brought, without payment of coſts. 436
38. *Sci. fa.* on recognizance of bail in error, need not ſet forth condition of recognizance. 436
39. Coſts on error in Exchequer chamber. 437
See *Motions*.

Eſſoins.

1. Of entering eſſoins, *ne recipiatur* eſſoin, adjourning, &c. 26
2. Eſſoin days. 73, 79
3. Eſſoin cannot be caſt by attorney. 26, 600, in notes

Exception to bail.

1. To be entered, and notice given of it. 108
2. Or bail abſolute in 20 days. *Page* 110
3. On exception, bail muſt juſtify, or new bail added, who, &c. in four days. 111
4. Exception to bail taken by commiſſioners, to be within 20 days after tranſmitted, and notice; and then better bail, or bail to juſtify. 116
5. Bail excepted to, to be perfected within four days. 117
6. Additional bail to juſtify, tho' not excepted. 117
7. Bail excepted to in the vacation, to juſtify within the firſt four days of the next term. 117
8. What notice to be given of juſtifying. 117
9. Though writ of error *Non proſs'd*, bail liable. 434
10. If ſame bail put in above as given to the ſheriff, the plaintiff may except. 120, 121

Executions.

See 635.

1. *Capias ad ſatisfa.* 258
2. If defendant dies in execution, plaintiff may have execution againſt the lands or goods. 259
3. *Fieri facias.* 260

4. Where executed after defendant's death. *Page* 260
5. If only part levied, *Ca. ſa.* or *Elegit* for the reſidue. 260
6. *Elegit.* 261
7. If only part levied, *Ca. ſa.* for the reſidue. 261
8. Execution to be ſued out within the year and day, or elſe a *Scire facias.* 261
9. Where helped by continuances on the roll. 261
10. Of *Teſtatum* executions. 262
11. Of execution pending debt on the judgment. 262
12. After execution executed the court cannot enquire into the *Quantum* of debt and coſts. 262
15. Priſoner diſcharged for want of being charged in execution, not liable to be taken in execution. 328

See *Ha. Corp. ad ſatisfa.*

And *Habere facias poſſeſſionem.*

Executors.

1. No bail of an executor, unleſs on a *Devaſtavit* returned. 81
2. Entry of *Scire facias* in debt for an executor. 379
3. Entry of *Scire facias* in caſe for an executor, where plaintiff died after interlocutory, and before final judgment. *Page* 386 to 392
4. Entry of *Scire facias* in debt againſt an executor. 382
5. *Scire fieri* inquiry in debt for executors againſt an executrix. 398
6. *Scire facias* on a judgment recovered in the late kings reign againſt defendant and his wife (ſince deceaſed), executrix. Defendant adminiſtrator of the wife: Plea no aſſets. Replication. 401
7. *Scire facias* againſt an executor on a judgment of aſſets *in futuro:* Plea no aſſets, and iſſue. 404

Exigenter.

His appointment and duty. 31

Fees. See *Bill of Coſts.*

Fieri facias.

1. WHERE it need not have 15 days between the *Teſte* and return. 80
2. Quaſhed, being made returnable on a general return day inſtead of a day certain. 80 in notes
3. What. 260
4. Where executed after defendant's death. 260
5. If

5. If only part levied, *Ca. ſa.* or *Elegit* for the reſt. *Page* 260
6. *Fi. ſa.* in debt. 275
7. *Teſtatum fi. ſa.* 275
8. *Fi. ſa.* againſt an adminiſtratrix. 276
9. *Teſtatum fi. ſa.* after *Sci. fa.* in caſe *ſur aſſumpſit* againſt the wife, *dum ſola.* 277
10. *Fi. ſa.* on a judgment by a feme executrix whilſt ſole, whereupon execution is awarded on a *Sci. fa.* at the ſuit of huſband and wife. 277
11. *Fi. ſa.* againſt bail after *Sci. fa.* 278
12. Award of *Fi. fa.* and continuances. 279
13. *Fi. ſa.* in debt after *Sci. fa.* for executors on a judgment recovered by teſtator. 280

Filacers.

1. Their appointment and duty. 22 *&c.*
2. Of proceſs delivered without his name. 56

Fines on writs payable to the king. 97, 219

Fines for conveying lands.

1. Method of taking a fine in court. 453
2. *Præcipe* for writ of covenant. *Page* 454
3. *Præcipe* and concord. 454
4. Of taking it before the chief juſtice, a judge, or a ſerjeant. 455
5. By *Dedimus poteſtatem.* 456
6. Stat. 32 *Geo.* II. chap. 14. concerning the pre-fine. 459
7. Of paſſing the fine through the ſeveral offices. 461, *&c.*
8. Where an affidavit neceſſary of the due execution of a fine. 462
9. The form of the affidavit. 464
10. Fine paſſed by affidavit of a tradeſman. 467
11. Death of one of the cognizors before the king's ſilver entered, but no *Caveat* till after. 467
12. Fine taken beyond ſea, and not ſigned by the parties, ordered to paſs. 468
13. Fine amended. 469
14. If party die before return of writ of covenant, all is void. 469, 470
15. Bill of diſburſements and fees, on fine paſſed by *De. pc.* 472
16. A fine by three conuſors, and the wives of two of them, to two conuſees, upon two writs of covenant. 469

See *Clerk of the king's ſilver, chirographer.*

See *Return office.*

Forejudger.

1. No forejudger of an attorney, till notice in writing of a bill being filed. *Page* 297
2. Of forejudging an attorney. 299
3. *Memorandum* and forejudger. 299, 300

Franchiſes.

Proceſs to be ſerved there by the proper officer. 90

General Iſſue.

1. Form of it. 619

Guardian.

1. Summons for infant, that defendant may name him a guardian. 613

Habeas corpora juratorum.

1. WHERE it need not have 15 days between the *Teſte* and return. 80
2. *Habeas corpora juratorum.* 205

Habeas corpus cum cauſa. *Page* 308

1. Cauſe not to be removed by *Habeas corpus*, unleſs delivered before jury ſworn. 308
2. And before iſſue joined. 309
3. If carried back by *Procedendo*, not to be removed again before judgment. 309
4. Cauſe not concerning freehold, and not exceeding 5 *l.* not to be removed. 309
5. To what courts this extends. 309
6. Inferior courts may proceed in actions not exceeding 5 *l.* tho' there be other actions for above 5 *l.* 310
7. *Habeas corpus* directed to any ſheriff (except *London* or *Middleſex*) to be returnable on a day certain in term. 310
8. If to the ſheriff of *London* or *Middleſex*, may be returnable immediately. 310, 311
9. And the ſheriff muſt return ſuch writ the ſame day. 311
10. Priſoner charged with proceſs out of this court may be committed, though charged with proceſs out of *B. R.* or Exchequer. 311

11. If

11. If charged with proceſs out of this court, returnable at a day to come, may be committed. *Page* 311
12. Return of *Habeas corpus* muſt be on a day certain, if in court in term time. 311
13. Of removing a priſoner to the *Fleet*. 311
14. A *Habeas corpus* to the ſheriff of *Middleſex* returnable before a judge. 312
15. The expence. 313
16. A *Habeas corpus* to the palace court. 313
17. A *Habeas corpus* to an inferior court within 5 miles of *London* may be returnable immediately. 314
18. Bail taken in abſence of plaintiff, or his attorney, to be *de bene eſſe*; and if no exception within 20 days, to be filed. 314
19. If no exception, and bail not filed within 4 days after the 20, a *Procedendo*. 314
20. Bail taken of priſoners, to be delivered to the prothonotary to be filed. 315
21. But priſoner not to be diſcharged till bail aſſented, *&c.* 315
22. Bail in all caſes of removal, except, *&c.* 315
23. Rule for *Procedendo*, unleſs bail in 4 days in term, and in 6 days in vacation. 315
24. Rule for better bail. *Page* 315
25. Of juſtifying. 315
26. Like notice of bail as in other caſes. 316
27. No limited time for *Procedendo* without bail. 316
28. Cauſes removed from cities and towns where the aſſizes are ſeldom held, to be laid in the county wherein, *&c.* 316
29. A *Procedendo* on a *Habeas corpus* to the palace court. 318
30. The like. 319
31. The like on a writ of *Habeas corpus* returnable in court. 319

Habeas corpus ad ſatisfaciendum.

1. A *Habeas corpus ad ſatisfaciendum* to the warden of the *Fleet* to bring a priſoner up to be charged in execution. 316
2. Number roll to be indorſed. 317
3. On ſeveral judgments there muſt be ſeveral writs of *Ha. corp. ad ſatisfa.* 317
4. A *Habeas corpus ad ſatisfaciendum* to the marſhal of the king's bench. 317, 318

Habere facias poſſeſſionem.

1. *Habere facias poſſeſſionem.* 370

2. *Habere facias poſſeſſ.* and *Fi' fa.* Page 370
3. *Hab. fac. poſſeſſ.* for an executor after a *Sci. fa.* 371, 372

Heir.

No bail of an heir. 81

Imparlance. 190

Infant.

1. Summons for infant that defendant may name him a guardian. 613

Inquiry.

1. WHERE on defendant's not joining iſſue, notice of inquiry ſhall be given from the time notice was given for trial. 198
2. When notice of inquiry may be given in caſes of demurrer. 228
3. Notice of inquiry on iſſue of *Nul tiel record.* 234
4. Inquiry awarded. 238, 240
5. Notice of executing writ of inquiry. 246
6. When 8 days in *London* or *Middleſex.* 246
7. When 14 days. 246
8. Eight days notice in the country. 247
9. Where a term's notice. Page 247
10. Where the plaintiff concludes *ad patriam*, gives notice of trial, and defendant don't join iſſue, notice of inquiry may be given from the time notice of trial was given. 198, 247
11. When notice of inquiry may be given on demurrer, or joinder in demurrer. 198, 234, 247
12. And on iſſue of *Nul tiel record.* 198, 234, 247
13. Where notice to be given to defendant, or left at his laſt place of abode. 247, 248
14. Notice of inquiry not to be given to defendant, if his attorney be known. 248
15. The form of a notice of inquiry. 248
16. As to the time. 249
17. And place. 249
18. Notice to country attorney. 249
19. Of executing inquiry before a judge of aſſize. 249
20. Promiſſory note muſt be proved on a writ of inquiry. *Quere.* 250
21. Irregularities cured by defence. 250
22. Inquiry ſet aſide. 250
23. The form of a writ of inquiry. 250
24. At the ſuit of an attorney. 252
25. Againſt

25. Againſt an attorney. *Page* 253
26. *Subpæna* to teſtify on a writ of inquiry. 253
27. Ticket thereon. 253
28. On ſigning judgment, the inquiſition to be left with the clerk of the judgments. 255
29. If inquiry not executed according to notice, defendant to have coſts. 255
30. Inquiry awarded, and death of plaintiff before inquiry made. 386
31. Inquiry awarded upon a *Scire facias*, where the plaintiff died after interlocutory, and before final judgment; and inquiſition returned thereon. 385

See *Motions*.

Inrolment. See deeds.

Inſimul computaſſet. 244

Irregularities.

1. In proceſs to be complained of before interlocutory judgment, and proceſs to be annexed to affidavit. 92
2. In plaintiff's entering appearance for defendant, to be complained of before judgment. 107
3. In delivering declaration, to be complained of two days before executing inquiry. *Page* 134
4. In writ of inquiry cured by defence. 250

Iſſue.

See 636.

1. Defendant to pay for a copy of the iſſue, and entering his pleadings. 193
2. When plaintiff appears for the defendant, he may charge it on the back of the iſſue. 190
3. Defendant's attorney, if copy of iſſue is over-charged, may tender what really due. 190
4. How if defendant a priſoner, and no attorney concerned. 190
5. Method of making up the iſſue. 190
6. Entry of an iſſue on a bill againſt an attorney, where the iſſue is joined in a term ſubſequent to that in which the bill was filed. 191
7. In country cauſes iſſue to be delivered to the agent in town, and not to the country attorney. 65, 192
8. Defendant's attorney, on receiving the iſſue, to pay plaintiff's attorney for filing

ing his warrant, otherwiſe judgment. *Page* 193
9. To be entered of the ſame term they are joined. 194, 201
10. On trial at bar, judges to have copies of the iſſue four days before the trial. 216
11. Miſtakes in iſſue, may be amended by ſummons, 616
12. Of encreaſing iſſues on *Diſtringas* againſt defendants having privilege of parliament. 599, 600

Judgments.

1. If agent of plaintiff's attorney gives agent for defendant time to plead, country attorney cannot ſign judgment, till time expired. 65
2. Regular judgment ſet aſide upon terms when conſidered as quick practice. 608 in notes
3. Bill of coſts on motion to ſet aſide judgment. 628 See 638. Bills of coſts.
4. To what day of the term a judgment ſhall relate, 74
5. No judgment (except, &c.) to be ſigned before the judgment paper be ſtamped by the clerk of the warrants. 194
6. Motion in arreſt of judgment, when 219
7. Notice to be given, if on the laſt day of term. *Page* 219
8. Not after motion to ſet aſide a verdict, unleſs, &c. 219
9. Judgment for defendant in default of plaintiff's joining in demurrer. 222
10. Of entering judgments by default. 235
11. Judgment in debt by *Nil dicit*. 236
12. *Cognovit actionem* in debt. 237
13. *Cognovit actionem* in debt on a bond. 237
14. *Non ſum informatus*. 237
15. *Nil dicit* in caſe and inquiry awarded. 237
16. *Relicta verificatione* & *Cognovit actionem* after *per minas* pleaded. 239
17. The like after *Non eſt factum* pleaded. 239
18. *Non eſt informatus* in caſe, and inquiry awarded. 239
19. No warrant to confeſs a judgment to be taken of a priſoner, unleſs an attorney on his behalf be preſent. 240
20. *Aliter* if defendant be an attorney. 241
21. If an attorney *B. R.* be preſent, it is ſufficient. 241
22. Warrant to be read by or to the party. 241
23. On

23. On warrant of a year ſtanding, judgment cannot be entered without leave. *Page* 241
24. When judgment may be entered by a treaſury rule on an old warrant of attorney. 241
25. Of a ſpecial original to ſupport a judgment. 242
26. On ſigning judgment upon a writ of inquiry, inquiſition to be left with the clerk of the judgments. 255
27. Of docketting judgments. 257
28. —— on a *Scire facias*. 378
29. —— on a *Scire facias* againſt an executor. 379
30. —— on a *Scire facias* againſt an adminiſtrator. 380
31. On a *Scire facias* for an executor, where plaintiff died after interlocutory, and before final judgment. 386
32. Judgment in caſe after inquiry executed, and awarded upon the ſame *Scire facias*. 396
33. —— on a *Scire facias* againſt bail. 392

Judges.

1. Singular inſtances of their refuſing to reſign. 4, 6
2. Of their commiſſions. *Page* 5
3. Of their ſalaries. 7

Judges Clerks.

Their appointment and duty. 33

Jurata. 321

Juriſdiction of the court. 1

Jury.

1. Party applying for a ſpecial jury to pay the whole expence, and not be allowed for more than a common jury, unleſs, &c. 215
2. What allowance to ſuch jury for ſerving. 216

Marſhal at Niſi prius *in* London *and* Middleſex.

HIS appointment and duty. 35

Memorandum.

Of a bill filed againſt an attorney. 299

Money, &c. brought into court.

1. The rule. 155
2. Money not to be brought into court, where the plaintiff

tiff is an executor or adminiſtrator. *Page* 156
3. May in debt for rent. 157
4. In replevin. 157
5. In covenant money may be brought in on one breach only, *viz.* for non-payment of rent. 157
6. In covenant for a ſum certain. 157
7. In debt on a bond denied. 157
8. And in debt on a charter-party. 157
9. And in debt on a bond for performance of covenants, and breach in a ſum certain. 157
10. In trover; whether goods may be brought into court. 157
11. Defendant ſhall not bring money in to part, and demur to the reſt of the declaration. 157, 158
12. Nor in action for meſne profits. 158
13. But leave to bring in money as to ſome counts, and plead ſeveral pleas to the reſt. 158
14. To bring in money, and plead *plene adminiſtravit*, and the general iſſue to the whole. 158
15. When money may be brought into court. 158
16. Not after a regular judgment ſet aſide. 159
17. Plaintiff nonſuited, the defendant cannot have the money back. *Page* 159
18. On a new action leave for plaintiff to have the money, or let it lie on the common rule. 159
19. The like, and leave to bring in more money on the common rule. 159
20. Plaintiff admitted to take the money, though he had refuſed it, and proceeded. 159, 160
21. If judgment arreſted, money may be paid to plaintiff. 160
22. Plaintiff's attorney paid his bill out of money brought into court. 160
23. What ſum may be brought in on a motion in the treaſury. 160
24. Leave to withdraw general iſſue, pay money into court, and plead ſame again. 160
25. Motion for paying money into court. 624

Motions.

1. Notice of motion for enlarging arbitrators time for pronouncing his award muſt be given. 606
2. How to be made. 621
3. For error in proceſs or notice ſubſcribed. 622
4. For error on writ of inquiry

quiry or execution thereof. *Page* 623
5. For ſetting aſide aſſignment of bail-bond. 624
6. For paying money into court, and for *Conciliums*. 624
7. For changing the *Venue*. 624
8. For ſpecial jury. 625
9. To put off trial for want of material witneſs. 625
10. For new trial or in arreſt of judgment. 626
11. Bill of coſts on motion to ſet aſide judgment. 628

Mutual Debts and Set-offs.

1. Where mutual debts may be ſet off between the parties. 616
2. They may be given in evidence or pleaded. 617
3. Lord Chancellor *Talbot* introduced the practice. 617 in notes
4. When money muſt be paid into court. 618, 619
5. Form of general iſſue with notice of ſet-off. 619

Nil dicit.

1. IN debt. 236
2. *Nil dicit* in caſe and inquiry awarded. 237

Niſi prius record.

1. Of making up *Niſi prius* record. *Page* 199
2. No record of *Niſi prius* to be ſigned before iſſue entered. 201
3. In what manner records of *Niſi prius* are to be ingroſſed. 202
4. Within what time they muſt be made up for the aſſizes. 202
5. No record of *Niſi prius* to be ſealed, unleſs ſigned by the clerk of the warrants. 202
6. Hours of attendance for ſealing them. 202
7. Time for entring them. 203
8. Records in cauſes entered for *firſt* day of ſittings *after* term, muſt be left with marſhal, by ſeven o'clock of the preceding evening. *Pref.*
9. No continuances in them. 203
1. *Niſi prius* record in ejectment. 361

Non omittas capias ad reſpond. 106, 635

Nonſuit.

1. *Non proſs*, ſigned for want of declaration, ſet aſide, becauſe

becauſe demanded of attorney in country, and not of agent in town. *Page* 64
2. When on default of plaintiff's going to trial, court ſhall give judgment of nonſuit. 188
3. Of obtaining judgment as in caſe of a non-ſuit, for not proceeding to trial in due time. 188, ſee 637

Non ſum informatus.

Non ſum informatus in caſe and inquiry awarded. 237

Notice. See 80.

1. Notice to be written on copy of proceſs. 89
2. The form of the notice. 89, 90
3. The day of the return to be inſerted, though a *Sunday.* 90, ſee 80
4. Where a copy of proceſs is ſerved, it muſt be with notice, though debt above 10 *l.* or writ ſpecial. 91
5. Notice of bail put in the form of it. 110
6. Notice muſt be given of exception to bail. 110
7. And of adding and juſtifying. 111
8. The form of a notice of adding and juſtifying bail. 111
9. Notice of bail taken by commiſſioner to be given within four days. *Page* 117
10. When notice to be given of juſtifying. 117
11. Notice of trial. 65, 195
12. All notices muſt be given before nine o'clock in the evening. 132
13. Notice of a bill being filed againſt an attorney. 297
14. Notice of leaving declaration in the office. 298
15. Notice on declarations in ejectment. 343, 346
16. Notice muſt be given of executing a *Scire fieri* inquiry. 400, 401
17. Notice of ſet-off. 619
18. Reaſon for directing notice of ſet-off to be given, 617 note (*c*)
19. This notice cannot be amended. 617 note (*c*)
20. Trial not to be put off for abſence of witneſs who only proves this notice. 617 note (*c*) 625 note (*b*)

Notice. See *Inquiry, Motions, Trial.*

Nul tiel record.

1. Proceedings on iſſues upon *Nul tiel record.* 229
2. Rule for judgment on bringing the record into court. 230
3. Proceedings thereon. 229
4. Declaration in debt on a judg-

judgment, plea *Nul tiel record*, and replication. *Page* 229, 230
5. Rule for judgment on bringing in record. 230
6. Recovery in a former action pleaded in bar: Replication, *Nul tiel record.* Rejoinder, day to bring in the record. Defendant *defecit de record.* 231
7. Plea of outlawry in another court. Replication *Nul tiel record.* Day to bring in record. Defendant *defecit de record.* 233
8. Notice of inquiry on iſſue of *Nul tiel record.* 234
9. When a four-day rule neceſſary on an iſſue of *Nul tiel record.* 234
10. Difference where proceedings by original, and where by bill. 234

Officers of the court, their appointment and duty.

1. CUSTOS *brevium.* 11
2. Prothonotaries. 12, 13, 14
3. Secondaries. 16
4. Clerks of the judgments. 17
5. ——— of the dockets. 18
6. ——— of the reverſals. 19
7. ——— of the treaſury of the jurats, or under clerks of the treaſury, and treaſury keeper. *Page* 20, 21
8. Filacers. 22, *&c.*
9. Clerk of the warrants. 24
10. ——— of the eſſoins. 26
11. ——— of the juries. 27
12. ——— of the return, and office of inrolment of writs for fines and recoveries. 27, 28
13. Clerk of the king's ſilver. 28
14. Chirographer. 30
15. Exigenter. 31
16. Clerk of the outlawries. 31
17. Prothonotary, *&c.* of *Monmouth.* 32
18. Seal office. 32
19. Clerk of the errors. 33
20. Judges clerks. 33
21. Aſſociate at *Niſi prius* in *London* and *Middleſex.* 34, 35
22. Marſhal at *Niſi prius* in *London* and *Middleſex.* 35
23. Crier at *Niſi prius* in *London* and *Middleſex.* 36
24. Chief proclamator. 36, 37
25. Criers. 36, 37
26. Court keeper. 37
27. Porter of the court. 37
28. Warden of the *Fleet.* 38
29. Clerk of the papers and rules of the *Fleet* priſon. 38
30. Tipſtaffs. 38
31. Commiſſioners for taking affidavits. 39, 40

Orders

Orders.

1. Order requiring appearance of peer or member of parliament may be enforced by *Diſtringas*. *Page* 598 in notes
2. The uſual terms on which judges orders are granted. 611

Original.

1. Original to ſupport judgment. 242
2. The form of a *Præcipe* for a ſpecial original. 242
3. Original to be beſpoke before the eſſoin day of the ſubſequent term. 245
4. Fine to the king thereon. 245
5. Of returning the original. 246
6. Form of ſpecial original. 595
7. Drawing and engroſſing ſpecial original how much per ſheet and fee. 635

Outlawry.

1. A *Ca. ſa.* to ground an exigent, muſt have 15 days between the *Teſte* and return. 80
2. Defendant ſooner outlawed in *London* than in another county. 410
3. Of the *Præcipe* for the original. *Page* 410
4. A *Præcipe* for a ſpecial original, on an *aſſumpſit* for the charges of a funeral. 410
5. Of returning the original. 413
6. Of making out the *Capias*, *Alias* and *Pluries* 413
7. Of returning them. 413
8. Warrant of attorney to be filed of the ſame term with the exigent. 414
9. Exigenter not to receive *Pluries* before ſigned by the clerk of the warrants. 414
10. The warrant of attorney. 414
11. Exigenter on receipt of the *Pluries* ſtampt to make out the exigent and proclamation. 415
12. Where an *Allocatur* neceſſary. 415
13. Where an exigent is awarded a proclamation to be made of the ſame *Teſte* and return. 415
14. Sheriff to make three proclamations. 415
15. Officer, who makes out the exigent, to make the writ of proclamation. 416
16. Attornies to be careful that writs of proclamation be delivered. 416
17. Proclamation to be filed. 416
18. *Capias*

18. *Capias utlegatum* either general or ſpecial. *Page* 416
19. If defendant appears on the exigent no bail required. 417
20. Sheriff not to diſcharge a defendant arreſted in a *Capias utlegatum* without a *Superſedeas*. 417
21. Before *Superſedeas* defendant to give bail if cauſe of action amounts to 10*l.* or upwards. 419
22. Bail to ſatisfy the condemnation. 418
23. Outlawry not to be reverſed after the death of the plaintiff without bail to the executor. 418
24. *Cap. ult.* iſſued without revival of judgment, which appeared to be entered after plaintiff's death, ſet aſide. 418, 419
25. Outlawry commenced and proſecuted, during defendant's reſidence in *Ireland*, reverſed without bail, or appearance. 419
26. Court hath diſcretionary power to reverſe outlawries on motion in a ſummary way for a viſible defect, but will not exerciſe it, unleſs in a favorable caſe for defendant, if not, will oblige party to bring error. 419
27. On reverſing outlawry defendant to pay coſts to the exigent and the fine. 419
28. Further coſts to be reſpited *quouſque*. 419
29. No *Superſedeas* to the exigent, unleſs put in before the day of appearance to be allowed till coſts paid. 419
30. On reverſal defendant to pay coſts to the exigent where inquiſition taken, *&c.* further coſts to be taxed. 419
31. *Superſedeas* in an appearance. 420
32. On reverſing an outlawry, if plaintiff proceeds not in two terms, defendant to have coſts taxed. *Page* 420
33. Of outlawing after judgment. 420
34. No outlawing after judgment pending a writ of error. 421
35. Inſtances of viſible perſons being outlawed. 421 in notes
36. Of procuring the money levied on the defendant's goods, *&c.* 422
37. Notice of taking inquiſition to be given defendant. 422
38. Form of *Subpoena* to teſtify. 422, 423
39. Of ſuing out *Venditioni Exponas*. 423
40. Of

40. Of petition to treasury for the levy thereon. *Page* 423
41. Form of petition. 424
42. Expences thereon. 425, 426

Oyer.

1. What time defendant has to plead after oyer. 183
2. On oyer defendant intitled to witnesses names, and all indorsements. 183
3. If defendant makes the oyer no part of his plea, plaintiff may make it part of the issue. 183
4. Within what time defendant ought to deliver oyer of a deed pleaded by him. 183
5. What plea cannot be pleaded, without craving oyer. 183
6. Oyer must be demanded before time for pleading expires. 183

Paper books.

1. ON trial at bar copies of the issue to be delivered to the judges four days before the trial. 216
2. On special verdicts and demurrers how paper books to be delivered. 217
3. No argument till books delivered. 218
4. If either neglect, the other side may deliver all the books. *Page* 218
5. And be reimbursed by the attorney making default. 218
6. If not paid before judgment, to be allowed in costs. 218
7. If no costs attachment against attorney making default. 218
8. As to delivering paper books on demurrer. 227
9. In judges books, counsels names, number roll and day of argument to be set down. 228
10. If plaintiff makes up and delivers paper book, on defendant's delivering a dilatory plea, he waives benefit of, and looses remedy on judge's order, and will be obliged to proceed on paper book. 615

Parliament.

1. Proceedings against peers, and members of parliament, and their servants. 596
2. May be proceeded against notwithstanding their sessions. 596
3. Proceedings are by bill. 596
4. Form of bill, whether defendant be an English, Scotch, or Irish peer, or member of parliament only. 597
5. Of

5. Of the writ of ſummons. *Page* 598
6. Of the *diſtringas*. 598
7. Of caſting an eſſoin. 600
8. Bill of coſts on proceedings againſt parliament men. 601
9. Servants of peers, and members of parliament, may be arreſted as common perſons. 596 in notes

Peers, ſee *Parliament*.

Pleading.

See 65, 184

1. Plea to be demanded in writing. 127
2. Where it need not be demanded. 127
3. When defendant muſt plead in four days. 130
4. When in eight days. 130
5. The days incluſive. 130
6. Notice to plead in four days when it ſhould be eight days: Irregular. 133
7. Plea to be delivered in writing to plaintiff's attorney. 178
8. When to be left in the office. 178
9. Rule to plead, and an order for time to plead: Need not give a new rule to plead. 178
10. The like where delayed by an injunction. 178
11. Plea can't be delivered in the country. *Page* 178
12. *Nil debet* pleaded to an *Aſſumpſit*, plaintiff may ſign judgment. 178
13. Tender, when to be pleaded. 179
14. No dilatory plea to be received without affidavit. 179
15. Affidavit to pleas of ancient demeſne, and of infancy. 179
16. Plea in abatement to be pleaded in four days. 179
17. For want of affidavit to a plea in abatement, plaintiff may ſign judgment. 180
18. And ſo he may if a plea which ought to have a ſerjeant's hand be delivered without. 180
19. What pleas require a ſerjeant's hand. 180
20. Demand of a plea to be in writing. 181
21. When to ſign judgment. 181
22. When on a judge's order for time to plead. 181
23. No ſummons to be taken out after the rule to plead is out. 181
24. After ſummons no judgment till ſummons is diſcharged. 181
25. What not iſſuable pleas within the meaning of an order for time to plead, pleading

pleading iſſuably. *Page* 181, 182
26. Pleading iſſuably, rejoining gratis, and taking *ſhort* notice of trial explained. 182 in notes
27. What time the defendant has to plead after oyer. 182
28. What cannot be pleaded without craving oyer. 183
29. An oyer defendant intitled to witneſſes names, and all indorſements. 183
30. If the defendant makes the oyer no part of his plea, the plaintiff may make it part of the iſſue. 183
31. Within what time the defendant ought to deliver oyer of a deed pleaded by him. 183
32. Defendant may waive his ſpecial plea, and plead the general iſſue. 184
33. Can't withdraw a plea of tender. 184
34. Plea of *ad plene adminiſtravit* amended on payment of coſts. 184
35. Defendant to pay for a copy of the iſſue, on entering his pleadings. 189
36. All pleadings muſt be delivered before nine o'clock in the evening. 132

Pleading double.

1. Double pleas allowed. 185
2. Double pleas denied. *Page* 186
3. Leave to plead double any time before judgment. 188
4. Not after ſingle plea. 188
5. Nor after money brought into court. 188
6. On double plea, if plaintiff hath judgment on one, he cannot enter a *Nolle proſequi* as to the other plea. 188
7. If either plea found for the defendant, the plaintiff cannot have judgment. 189

Pleadings by Priſoners. See *Priſoners*, and 288 to 295

Pleas.

Pleas general and ſpecial. 165

General Iſſues.

1. *Non eſt factum* to debt on a bond. 166
2. —— to a bill or indenture. 166
3. *Non eſt factum teſtatoris.* 166
4. *Nil debet.* 166
5. *Nil debet* in debt *qui tam.* 166
6. *Non detinet* in debt. 167
7. *Non aſſumpſit.* 167
8. *Non aſſumpſit* by executors. 167
9. Not guilty in caſe. 167
10. —— in treſpaſs. 167
11. Not

11. Not guilty in aſſault. *Page* 167
12. Replication to general iſſues. 168

Special Pleas.

1. *Non aſſumpſit infra ſex annos:* Replication and rejoinder. 168
2. *Actio non accrevit infra ſex annos:* Replication and rejoinder. 169
3. *Son aſſault demeſne:* Replication *de injuria ſua propria:* Rejoinder, and *Venire* awarded. 169, 170
4. Juſtification in aſſault and impriſonment: Writ iſſued out of *B. R.* againſt plaintiff, directed to ſheriff of *D.* and warrant to defendants, by virtue whereof they arreſted. 171
5. Plea, *Infra ætatem.* Replication, for neceſſary apparel ſuitable to defendant's degree. Rejoinder, not for neceſſary apparel, *&c.* 173, 174
6. Plea to debt on a bond, dureſs of impriſonment. 174
7. Plea in caſe *Sur aſſumpſit*, a tender, Replication. 175, 176
8. Plea in abatement, *Miſnomer* of defendant's ſurname. 177
9. Plea in abatement, defendant a yeoman, and not a cheeſemonger. *Page* 177
10. *Nul tiel record*, replication, *&c.* 229
11. Recovery in a former action pleaded in bar. Replication, *Nul tiel record.* Rejoinder: *et* deft. *defecit de recordo.* 231
12. That the plaintiff is outlawed in another court. Replication. *Nul tiel record: Et* deft. *defecit de recordo.* 233
13. Plea in dower, huſband not ſeiſed. 512
14. *Riens per deſcent* by an heir to debt on a bond. Replication and rejoinder. 522
15. *Ne unques executor*, and replication. 526
16. Plea, nothing in arrear, to debt for rent. 571
17. Plea, not guilty to an action on the ſtatute of hue and cry. 581
18. Juſtifying as a park-keeper, for ſhooting a greyhound. 586
19. Plea to a prohibition, and replication. 590
20. Plea, that bond was given for money won at play. 591
21. Plea, not guilty in ejectment. 360, 361

22. Plea to a *Scire facias* againſt an adminiſtrator: No aſſets, and replication. *Page* 403
23. Plea to a *Scire facias* upon a judgment of aſſets in *futuro*: No aſſets and iſſue. 404

Pone, what. 14 in notes

Porter of the court.

His appointment and duty. 37

Poſteas.

1. To be left with the clerk of the judgments. 217
2. Clerk of aſſize and aſſociate to return *Poſteas*. 216
3. *Poſtea*, verdict for plaintiff in ejectment. 322

Præcipe.

1. *Præcipe* in treſpaſs. 88
2. ——— in debt. 96
3. ——— againſt two defendants. 97
4. ——— in treſpaſs, with an *Acetiam* in debt. 98
5. ——— with an *Acetiam* in caſe upon promiſe. 99
6. ——— in caſe againſt two defendants. 99, 100
7. ——— in aſſault. 99
8. ——— in aſſault with an *Acetiam*. 99
9. *Præcipe* in covenant. *Page* 100
10. ——— in account as receiver. 100
11. ——— as bailiff. 100
12. ——— as bailiff and receiver. 101
13. ——— in annuity. 101
14. ——— for a *Teſtatum capias*. 101

Priſoners.

1. Priſoner diſcharged, not to be held to bail in the judgment. 85
2. If defendant a priſoner, and no attorney is concerned for him, judgment cannot be ſigned for not paying for a copy of the iſſue. 190
3. Priſoner brought up by *Habeas corpus*, charged with proceſs out of this court, may be committed, though charged with proceſs out of *B. R.* or Exchequer. 311
4. If charged with proceſs out of this court returnable at a day to come, may be committed. 311
5. Of removing a priſoner to the *Fleet*. 311
6. Bail upon *Habeas corpus* taken of a priſoner, to be delivered to the prothonotary to be filed. 315
7. But priſoner not to be diſcharged till bail aſſented to, *&c.* 315

8. When

8. When defendant is in cuſtody for want of bail, plaintiff before the end of the next term after the return of the writ, may declare againſt ſuch priſoner. *Page* 320
9. And have judgment in default of appearance, and plea. 320
10. Declaration not to be delivered to the priſoner, until after the return of the writ. 321
11. Priſoner in cuſtody for a contempt, not to be charged with a declaration or execution, without leave. 321
12. No rule to plead, till affidavit of the delivery of the declaration. 321
13. If a declaration be delivered before *menſem Paſchæ*, or *craſtinum animarum*, if the defendant appears within 10 days after the end of the reſpective terms, he may imparl until the next term, unleſs, *&c.* 322
14. If declaration delivered on or after the *menſ. Paſ.* or *craſt. animar.* or in *Hil.* or *Trin.* term, and defendant appears two days before the eſſoin day of the next term, he may imparl to the next term. 322
15. If declaration delivered before the eſſoin day of the ſecond term, defendant to plead without imparlance. *Page* 323
16. If no declaration filed before the end of the ſecond term, and affidavit filed, *&c.* defendant to be diſcharged by *Superſedeas.* 323, 612, 613
17. Gaoler concealing a declaration liable to an attachment. 323
18. Of declaring againſt a priſoner in the *Fleet.* 323
19. Eight days to plead. 324
20. Affidavit of the delivery of a declaration againſt a priſoner. 324
21. Where declaration to be entered with the prothonotary before delivered. 324
22. In an action on a joint bond where one defendant could not be arreſted, time to declare denied. 324, 325
23. If plaintiff proceed not to judgment in three terms incluſive after declaration delivered, defendant to be diſcharged. 325
24. If plaintiff doth not charge defendant in execution, within two terms incluſive after judgment, defendant to be diſcharged. 325
25. Defendant ſurrendering himſelf in diſcharge of his bail before declaration delivered, to be declared

againſt in two terms, or defendant to be diſcharged. *Page* 326

26. Need not be charged within two terms, if error brought, or treaty ſubſiſts. 326

27. If declaration delivered, or judgment had before render, plaintiff to proceed to judgment in three terms, and charge defendant in execution within two terms after judgment, or defendant to be diſcharged. 326, 327

28. Copy of declaration not ſufficient to charge priſoner in cuſtody, unleſs affidavit be made, that the cauſe of action is 10 *l.* or upwards. 327

29. The plaintiff, at whoſe ſuit defendant was arreſted, need not make ſuch affidavits. 327

30. A priſoner diſcharged for want of proſecution, if afterwards arreſted in an action on the judgment, a common appearance ſhall be taken. 328

31. A priſoner diſcharged for want of proceeding to judgment, may be afterwards taken in execution; *aliter*, if diſcharged for want of being charged in execution. 328

32. A priſoner in contempt not intitled to a day rule. *Page* 328

33. A priſoner arreſted by proceſs of *B. R.* removed into the *Fleet*, how to be proceeded againſt, or diſcharged. 328

34. How to proceed where defendant after being ſerved with copy of proceſs, and before declaration, becomes a priſoner. 329

35. *Superſedeas* on putting in good bail. 329

36. The like to the ſteward of a liberty. 330

37. *Superſedeas* on entering a common appearance. 330

38. *Superſedeas* for want of proſecution, where the defendant was taken by the late ſheriff. 330

39. *Superſedeas* for want of declaring in two terms. 332

40. *Superſedeas* for want of an affidavit of the debt, and indorſement on the back of the declaration; wherewith defendant was charged in the *Fleet*. 333

41. *Superſedeas* for want of plaintiff's proceeding to judgment within three terms after declaration delivered. 334

42. *Superſedeas* for not charging defendant in execution within

within two terms after judgment. *Page* 334, 335
43. *Superſedeas* for want of proceeding to judgment and execution, at the ſuit of ſeveral plaintiffs. 335
44. Bill of Coſts on proceedings againſt priſoners. 337
45. Order of *Superſedeas* to diſcharge priſoner is made on default of attending *firſt* ſummons. 612 in notes
46. Of ſummons for priſoner to be diſcharged, on his bail being perfected. 613
See *Judgment, warrant of Attorney.*

Privilege.

1. Obſervations on rule touching privilege of freedom from arreſt. 57
2. Writ of privilege for an attorney iſſued to the palace court. 300
3. Another where an attorney was arreſted on a *Cap. ad reſpond.* 303

Procedendo.

1. On a *Hab. corp.* to the palace court. 318
2. The like in another form. 319
3. The like on a *Habeas corpus* returnable in court. 319

Proceſs.

1. Where cauſe of action under 10*l.* defendant to be ſerved with copy of proceſs. *Page* 86
2. Notice to be written on the copy of proceſs. 89
3. The form of the notice. 89
4. The day of the return to be inſerted, tho' a *Sunday.* 90
5. Five ſhillings for making and ſerving the copy. 90
6. In franchiſes the copy to be ſerved by the proper officer. 90
7. *Capias* and not original to be ſerved. 90
8. Of ſerving proceſs in a county palatine. 90
9. Where copy of proceſs ſerved, it muſt be with notice, tho' action be above 10*l.* or writ ſpecial. 91
10. Proceſs againſt baron and feme, ſervice on the huſband ſufficient. 91
11. In a joint action each defendant muſt be ſerved. 91
12. Attorney's name to be on copy of proceſs, but the want thereof doth not make the proceſs void. 56, 91
13. Proceſs may be ſerved on the day of the return. 91

14. Irregularity in proceſs to be complained of before interlocutory judgment. *Page* 92
15. And proceſs to be annexed to affidavit. 92
16. Affidavit of ſervice of proceſs may be made before plaintiff's attorney, if a commiſſioner. *Page* 92, 93
17. Void or irregular proceſs. 95, 105

Prothonotaries.

See *Motions.*

1. Their appointment. 12
2. Duty of the chief prothonotary. 13
3. Of the three prothonotaries. 14
4. New rule touching their office. 59

Prothonotary, &c. *of* Monmouth.

His appointment and duty. 32

Quakers.

QUAKER taking the ſolemn affirmation may be admitted an attorney. 44

Record. See *Niſi Prius Record.*

Recoveries.

1. OF ſuffering a recovery where the parties appear in perſon. *Page* 474
2. The entry of the recovery on the roll. 476
3. The exemplification of it. 479
4. Of ſuffering a recovery when the parties appear by attorney. 480
5. Rule of *H.* 14 *Geo.* III. touching recoveries at bar. 481
6. Form of affidavits on the ſaid rule. 481
7. Entry of the firſt, or ſummons roll. 487
8. Entry of the ſecond roll. 488
9. Recovery amended. 495
10. Exemplification of it. 496
11. Writ of ſummons for the firſt vouchee. 500
12. —— for the ſecond vouchee. 501
13. Writ of ſeiſin. 502
14. The return. 503
15. A recovery with treble voucher. 503
16. Bill of coſts thereon. 505

Refalo, what. 4 in notes

See *Replevin.*

Refe-

References from Court.

1. To whom application to be made thereon. *Page* 604
2. How to get witneſſes ſworn. 604
3. Of arbitrators appointment. 604, 605
4. Form thereof. 604 in notes
5. Of proceedings when day of reference appointed. 605
6. Of hearing thereon. 605
7. Of adjourning. 606
8. Of enlarging time to arbitrate. 606
9. Of the award. 607
10. Of making order of reference rule of court. 607

See *Return Office.*

Relicta verificatione et cognovit actionem.

1. ——— After *per minas* pleaded. 238
2. The like after *Non eſt factum* pleaded. 239

Remanet.

1. This term explained. 211 in notes

Replevin.

1. Of proceeding thereon. 440
2. Of proceeding if *Re. fa. lo.* brought by plaintiff. *Page* 441
3. If by defendant. 441
4. *Locus in quo* ought to be ſet forth in declaration. 441
5. Plea of *cepit in alio loco*, does not require affidavit, nor to be pleaded in four days, not being conſidered a plea in abatement, but in bar. 441, 442
6. After rule to plead in bar *de novo*, and demand made, and no ſuch plea, old plea in bar ſtands, and judgment ſigned when defendant ought to have replied to the old plea, ſet aſide. 442
7. Where notice of filing *Re. fa. lo.* and calling for a declaration neceſſary. 388
8. When *Procedendo* ſhall go. 441
9. *Recordari facias Loquelam.* 443
10. The return. 444
11. *Pone* in replevin. 445
12. Coſts for plaintiff. 446
13. Coſts for defendant. 449

Return Office, and Office for Inrollment of Writs.

For fines and recoveries. 27, 28

Return.

1. Day of return of proceſs to be inſerted in the notice, though on a Sunday. *Page* 90
2. Proceſs may be ſerved on the day of the return. 91

See 80.

Return and Teſte. See *Writs.*

Rolls.

1. Of bringing in rolls, and docketting them. 255
2. Attorney on receiving roll from the prothonotary's office, to ſign book. 255
3. Rolls not to be carried into the country. 256
4. When attornies are to bring in their rolls. 256
5. *Caret* papers. 256
6. No poſt rolls to be delivered to attornies. 256
7. When the officers are to carry in their rolls to the clerk of the eſſoins. 257
8. Clerk of the eſſoins to lay before the court what rolls are wanting. 257
9. Of docketting judgments. 257

Salaries of Judges. 7

Scire facias.

1. WHEN no execution within a year and a day. *Page* 261
2. A *Scire facias* after a year and a day. 375
3. Entry of a *Scire facias*, and judgment thereon. 377
4. *Scire facias* in debt for an adminiſtrator. 378
5. Entry of a *Scire facias* in debt for an executor, and judgment thereon. 379
6. Entry of a *Scire facias* in caſe againſt an adminiſtrator, and judgment thereon. 380
7. Entry of *Scire facias* in debt againſt an executor. 382
8. Where one *Scire facias* returned *Nihil* is ſufficient. 385
9. Where if plaintiff or defendant dies after interlocutory, and before final judgment, proceedings may be revived by *Scire facias.* 385
10. A *Scire facias* where the plaintiff died after interlocutory, and before final judgment. 386
11. Entry of the ſame *Scire facias*, *Alias Scire facias*, and judgment thereon. 388

12. Entry

12. Entry of *Scire facias* againſt bail. *Page* 392
13. *Scire facias* againſt bail on a *Habeas corpus* taken before a commiſſioner, defendant in perſon. 395
14. Entry of a *Scire fieri* inquiry for executors againſt an executrix. 398
15. *Scire facias* upon a judgment recovered in the late king's reign againſt the defendant and his wife (ſince deceaſed) executrix: Plea, no aſſets. Replication, aſſets. 401
16. *Scire facias* upon a judgment for aſſets *in futuro*, againſt an executrix: Plea, No aſſets, and iſſue. 404
17. Notice to be given of executing a *Scire fieri* inquiry. 400, 401
18. No coſts on *Sci. fa.* till plea. 407
19. Term of the judgment not neceſſary. 407
20. Where no *Sci. fa.* if a *ceſſet executio.* 407
21. *Scire facias* muſt be ſued out, tho' execution ſtayed by injunction. 407
22. Defendant charged in execution four years after judgment, without a *Scire facias.* 408
23. On death of defendant or plaintiff, a *Scire facias* muſt iſſue. 408
24. But not on the death of one, where there are many plaintiffs or defendants. *Page* 408
25. Into what county a *Scire facias* muſt iſſue. 408
26. Into what county on a recognizance. 409
27. *Sci. Fa.* need not ſet forth condition of recognizance. 436
28. How much drawing and ingroſſing *Sci. Fa.* per ſheet. 635

Seal Office.

Appointment and duty of the officers. 32

Seamen.

When not to be held to bail. 86

Secondaries.

Their appointment and duty. 16

Service. 635

See *Notice, Proceſs, Writ.*

Set-offs, ſee *Mutual Debts. Notice.*

Sheriffs.

Sheriffs.

1. Every ſheriff to make a deputy of record in court. *Page* 66
2. Deputy to have his name and place of abode, in *London* or *Weſtminſter*, ſet up in the office of the clerk of the warrants. 66
3. To give his attendance in *Weſtminſter-hall*, in term-time. 66
4. Sheriffs not to deliver out warrants before writs delivered to them, or blank warrants. 67
5. No under-ſheriff to practiſe as an attorney. 67
6. Sheriffs fees on executions. 67
7. —— on writ of poſſeſſion. 56
8. —— on *Cap. ad ſatisfa.* 68
9. Sheriff to indorſe attorney's name on warrant. 68
10. Sheriff not returning writ within ſix days after ſervice of rule, to pay coſts. 68
11. Service on the under-ſheriff ſufficient. 68
12. Old ſheriff to continue till new one ſworn. 69
13. On the death of a ſheriff, the under-ſheriff to act till a new one appointed. 69
14. Sheriff on requeſt and coſt of a lord of a franchiſe, or liberty, to appoint a deputy to reſide in ſome place near the franchiſe. *Page* 69
15. Place and coſts to be ſettled by lord chancellor. 69
16. Deputy to receive writs, and in name and under ſeal of ſheriff, to iſſue warrants to the lord of the franchiſe. 69
17. Taking no more than accuſtomed fees. 70
18. Puniſhment of ſheriff, or deputy, making neglect. 70
19. Sheriff by indenture and ſchedule, to turn over all priſoners to his ſucceſſor, or make ſatisfaction to the party injured. 70
20. Sheriff not liable to return any writ, unleſs required within ſix months after expiration of office. 70
21. Of the duty, fees, *&c.* of the under-ſheriff of *Middleſex*. 649
22. Rule on ſheriff for returning writ. 120
23. The like to bring in the body. 120
24. Not returning writ within ſix days after rule, to pay coſts. 120
25. Action againſt him for a falſe return. 120

Slander.

No bail in ſlander, except ſlander of title. *Page* 83

Soldier.

When not to be held to bail. 72

Special jury.

See *Bills of coſts. Jury. Motions.*

Special original.

See original.

Statute of Limitations.

1. Of ſuing out, entring, and returning proceſs on the roll, in order to ſave ſtatute of limitations. 595
2. On replication to attachment of privilege, in order to ſave the ſtatute it is ſufficient to ſhew *Teſte*, without continuances to time of declaration. 596

Subpoena.

1. *Subpoena ad teſtificandum.* 206
2. *Subpæna ticket.* 207
3. *Subpoena* to teſtify on a writ of inquiry. 253
4. Ticket thereon. 253
5. *Spa duces tecum.* 635

Summonſes.

1. To be taken out from a judge. *Page* 608
2. When ſummons ſtay of proceedings. 609
3. Of ſervice of ſummons. 609
4. Affidavit thereof. 609 in notes
5. Of attending ſummons. 609, 610
6. Of ſummons to pay debt and coſts 610
7. ——— to ſhew cauſe why common bail inſtead of ſpecial. 610, 611
8. ——— for time to put in bail above. 611
9. ——— for leave to add to and perfect bail. 611
10. ——— for time to plead 608 in notes, 611, 612
11. Summons muſt be diſcharged, before judgment can be ſigned. 609, in notes, 612
12. ——— for priſoner to be diſcharged for want of declaration. 612, 613
13. ——— for certificated bankrupt to be diſcharged. 612
14. ——— for defendant to be diſcharged on his bail being perfected. 613
15. ——— for infant that defendant may name a guardian. 613

16. ———

16. Summons for attorney to deliver client his bill. *Page* 613

17. ——— for amending miſtakes in declaration or iſſue. 616

18. All proceedings while in *paper*, except declaration in ejectment, are amendable by ſummons. 616 in notes

Superſedeas.

1. Several forms thereof. 329, 335

2. Coſts of *Superſedeas* to diſcharge priſoner out of cuſtody. 339

3. Order of *Superſedeas* to diſcharge priſoner or bankrupt, will be made on *firſt* ſummons. 612 in notes

Tender pleaded. 175

1. PLEA of tender not an iſſuable plea within judge's order. 181

2. After tender and money brought into court, defendant cannot withdraw his plea, and plead general iſſue. 184

3. When to be pleaded. 179

Terms.

1. Of the four terms. *Page* 71

2. Fixed and moveable terms. 71

3. Iſſuable terms 71

4. *Michaelmas* term. 71, 75

5. *Hilary* term. 72, 76

6. *Eaſter* term. 72, 77

7. *Trinity* term. 72, 78

8. Eſſoin day. 73

9. Writ of adjournment. 73

10. Judgment, to what day of the term it relates. 74

11. Term wherein writ is returnable is one of the two terms for declaring againſt priſoners. 612. in notes

12. Eſſoin days in *Eaſter* and *Trinity* terms are ſundays, except, *&c.* 79

13. Writs grounded on originals are returnable on general returns. 79

14. Attachments, *&c.* on days certain. 79

15. *Dies non juridici.* 79

16. Fifteen days between *Teſte* and return of original writs, and writs ſubſequent. 79

17. And attachments of privilege. 79

18. Where writs of *Venire facias*, *Hab. corp. jur.* *Diſtring. jur.* *Fi. fa.* and *Ca. ſa.* need not have fifteen days between *Teſte* and return. 80

19. Except

19. Except a *Ca. ſa.* to ground an exigent on, or make bail liable. *Page* 80

Teſte. See writs.

Teſtatum Capias ad reſpond'.

1. Where neceſſary. 101
2. The form of it. 102
3. Of putting in bail thereon. 108

Teſtatum Execution. 262

Teſte and Return. See *Writs.*

Tipſtafs.

Their appointment and duty. 38

Treſpaſs.

1. Bail in treſpaſs for entering plaintiff's hop ground, and taking away his hop-poles. 82, 83
2. Declaration therein for breaking plaintiff's cloſe. 152

Trial.

See 65, 195.

1. Eight days notice of trial in *London* or *Middleſex.* 196
2. When 14 days in *London* or *Middleſex.* *Page* 196
3. Eight days in the country. 196
4. When ten days notice of trial. 196
5. And ſix days notice of countermand. 197
6. Notice of trial when to be given to the attorney, or agent. 197
7. Of notices in general. 197
8. A term's notice, when no proceedings for four terms excluſive. 197
9. To be given before the eſſoin day of the term. 197
10. What deemed a proceeding. 198
11. When the plaintiff concludes *ad patriam*, the defendant to accept notice of trial on the back of the pleading. 198
12. And if don't join in iſſue, to accept notice of inquiry from the time of notice of trial. 198
13. Notice of trial not to be given to defendant, if his attorney known. 198
14. When the plaintiff may give ſhort notice, he muſt give as much as he can. 199
15. For trial by *proviſo* the defendant muſt give the ſame notice the plaintiff ſhould have done. 199

16. Of making up the *Niſi prius* record. *Page* 199
17. Cauſes to be entered with the marſhal. 208
18. Formerly four days before trial, now two days. 208
19. Records to be brought in before the ſittings after term. 208
20. On circuit, writ and record to be entered together. 208
21. On circuit, in what time record to be brought in, and entered. 208
22. Cauſes to be tried in the order entered. 209
23. Liſt of cauſes to be made, and hung up. 209
24. Entering fee in *London* and *Middleſex*. 209
25. At the aſſizes. 209
26. If plaintiff don't go to trial at the aſſizes, he muſt give new notice. 209
27. In *London* or *Middleſex* may give new notice before the day of ſitting, for the next ſitting. 210
28. Plaintiff can continue his notice but once. 210
29. Can't countermand and continue in the ſame notice. 210
30. If plaintiff doth not proceed to trial according to notice, nor countermand, he ſhall pay coſts. 210
31. Both plaintiff and defendant giving notice of trial, and neither going to trial, each paid coſts. *Page* 210, 211
32. Countermand at the aſſizes. 211
33. In *London* or *Middleſex*. 211
34. Countermand after record made a *Remanet*. 211
35. When, on default of the plaintiff's going to trial, the court ſhall give judgment of nonſuit. 212
36. Of obtaining judgment, as in caſe of a nonſuit for not proceeding to trial in due time. 212
37. For trial at ſittings after term, no *Ne recipiatur* till after proclamation. 215
38. Motion to put off a trial, when. 215
39. Not to be granted, if the witneſs was in the way when notice of trial given. 215
40. Party applying for a ſpecial jury, to pay the whole expence, and not to be allowed for more than a common jury, unleſs, *&c.* 215
41. What allowance to ſuch jury for ſerving. 216
42. *Venire* on a penal ſtatute to be *de corpore comitatus*. 216
43. On trial at bar, plaintiff's attorney to give notice of the day to the chief prothonotary. 216

44. On

44. On trials at bar, judges to have copies of the iſſue four days before the trial. *Page* 216
45. No motion in arreſt of judgment, after motion for a new trial. 219
46. Verdict ſet aſide for exceſſive damages. 219
47. Motion for a new trial, when. 219
48. Seldom when iſſue lay on defendant. 219
49. Seldom in ejectment, if verdict *pro. D. aliter*, if *pro. Q.* 219
50. Of new trials in ejectment. 365
51. Trial not to be put off for abſence of witneſs who only proves notice of ſet-off. 677 note (*c*)

See 625, 636, 638.

Trover.

1. Declaration therein 153, 154

Venire facias.

1. WHERE it need not have 15 days between the *Teſte* and return. 80
2. *Venire facias.* 203
3. ——awarded. 190
4. *Venire facias* on a penal ſtatute, to be from the body of the county. 216

Venue.

See 162.

1. As to changing the venue. 161
2. Local actions. 161
3. Tranſitory actions. 161
4. Caſe, treſpaſs, aſſault or impriſonment, to be laid in their proper counties, unleſs, *&c.* 161
5. Attornies laying actions of treſpaſs, *&c.* in foreign counties, unleſs, *&c.* to be ſeverely puniſhed. 161
6. Venue may be changed before plea, on motion and affidavit. 161
7. Defendant to plead as before. 161
8. Venue may be changed, though the defendant comes in on the exigent. 162
9. Venue can't be changed before appearance. 162
10. May move to change the venue at any time before plea. 162
11. Where a plea ſhall be a waiver of a rule *Niſi* for changing the venue. 162
12. Venue changed on reading the declaration without an affidavit. 163
13. Not to be moved the laſt day of term, unleſs, *&c.* 163
14. The

14. The venue not to be changed from a county to a city: Except *London*. *Page* 163
15. But may from one county and city to another. 163
16. Not to be changed into a county palatine. 163, 164
17. Of changing venue into cities and counties where the aſſizes are ſeldom held, or but once a year. 164
18. Nor in an action of *Scandalum magnatum*, or on a bond, or promiſſory note. 164
19. If a ſerjeant or attorney ſues by *Capias*, the venue may be changed. 165
20. An attorney defendant, not intitled to have the venue changed. 165
21. Cauſes removed from cities or towns, where aſſizes ſeldom held, to be laid in the counties wherein, *&c.* 316
22. Venue changed from *Middleſex* to *Monmouthſhire*. 165
23. Summons or order for time no bar to motion to change *venue*. 612 in notes
24. Motion for changing venue. 624

Verdicts.

1. OF ſpecial verdicts. *Page* 217
2. Paper books in ſpecial verdicts, how to be delivered. 217
3. No argument till books delivered. 218

See *Paper Books.*

4. Verdict ſet aſide for exceſſive damages. 219
5. Verdict for plaintiff in ejectment. 364

Underſheriff. See ſheriff.

Wales.

WHEN bail in *Wales*. 72

Sir *John Walter.*

1. Singular inſtance of his refuſing to reſign. 4

Warden of the Fleet:

His appointment and duty. 138

Warrant of Attorney.

1. Attorney to enter his warrant on record. 193

2. When to be filed. *Page* 193
3. Defendant's attorney on receiving the iſſue, to pay plaintiff's attorney for filing his warrant of attorney; otherwiſe judgment. 193
4. Plaintiff's attorney to file his warrant the term he declares, defendant's attorney the term he appears. 194
5. No judgment (except, &c.) to be ſigned before judgment paper be ſigned by the clerk of the warrants. 194
6. Plaintiff's warrant of attorney. 195
7. Defendant's warrant of attorney. 195
8. No warrant of attorney to confeſs a judgment to be taken of a priſoner, unleſs an attorney on his behalf be preſent. 240
9. *Aliter*, if defendant be an attorney. 241
10. Preſence of an attorney *B. R.* ſufficient. 240
11. To be read to or by the party. 241
12. Judgment on a warrant of a year ſtanding, can't be entered without leave of the court. 241
13. When a treaſury rule ſufficient for that purpoſe. 241

Writs.

See 80, 935.

1. Writs not to be returnable on *Dies non juridicus*. *Page* 79
2. ——grounded on originals are returnable on general returns. 79
3. Attachments, &c. on days certain. 79
4. Fifteen days between *Teſte* and return of original writs, and writs ſubſequent, and attachments of privilege. 79
5. Where writs of *Ven. fac. Hab. corp. jur. Diſtring. jur. Fi. fa.* and *Ca. ſa.* need not have 15 days between *Teſte* and return. 80
6. Except a *Ca. ſa.* to ground an exigent, or make bail liable. 80
7. Attorney's name to be ſubſcribed on every writ for arreſting the body, execution and warrant thereon. 54
8. And on every copy of proceſs to be ſerved on the defendant, but the want thereof doth not make the proceſs void. 56, 105
9. The not ſubſcribing the attorney's name on the warrant doth not vitiate the writ. 56, 105
10. Sum ſworn to, to be indorſed on the writ, where bail required. 104
11. The day of ſigning to be ſet down on the writ. 104

The End of the FIRST VOLUME.

ERRATA and OMISSIONS.

Page 597. In margin *for* "direction" *read* "form." *P.* 608. L. 8. *for* "the" *read* "though." Line 9 *after* "court" *add* "will." *Before* "ſummonces" *add* "on order of reference from court, party ſeeking relief, muſt apply before award made, unleſs on ſome irregularity in award, and then before order is made rule of court, or he will be too late". *P.* 622. dele See *C. B.* pract. 92. in margent. *P.* 650. L. 12, *after* "the" *add* "under-ſheriff's" and *before* "him" *add* "by the high ſheriff." *P.* 856. L. 21 *for* "party" *read* "petty."

LAW BOOKS lately publiſhed.

1. ATTORNEY'S PRACTICE in the Court of King's Bench, or an Introduction to the Knowledge of the Practice of that Court as it now ſtands on the Regulation of ſeveral late Acts of Parliament Rules and Determinations of the ſaid Court, by *Robert Richardſon*, the ſixth Edition with very conſiderable Additions, 2 Vols. 8vo.

2. CASES OF PRACTICE in the King's Bench, ſelected from the Books of Reports and methodically arranged under proper Titles, in 1 Vol. 4to.

3. SOLICITOR'S COMPLEAT GUIDE IN CHANCERY, ſhewing the whole Practice of that Court from the iſſuing of the Subpœna to the final Decree, arranged in an intire new and comprehenſive Manner, with Forms of all neceſſary Precedents and a compleat Table of Fees, 2 Vols. 12mo.

4. *Hale's* HISTORY OF THE PLEAS OF THE CROWN, with additional Notes and References to modern Caſes, concerning the Pleas of the Crown, together with an Abridgment of the Statutes enacted ſince the firſt Publication of this Work, by *George Wilſon*, Serjeant at Law, in two large Volumes 8vo.

5. *Gilbert's* LAW OF EVIDENCE, with additional Notes and References, fourth Edition, 8vo.

6. *Cunningham's* LAW OF BILLS OF EXCHANGE, PROMISSORY NOTES, BANK NOTES AND INSURANCES, containing

containing all the Statutes, Caſes at large, Arguments, Reſolutions, Judgments, Decrees and Cuſtoms of Merchants concerning them methodically digeſted, ſixth Edition, 8vo.

7. *Cunningham*'s LAW OF TITHES, containing all the Statutes, adjudged Caſes, Reſolutions and Judgments relative thereto, fourth Edition, 8vo.

8. *Tenant*'s LAW, or Laws concerning Landlords, Tenants and Farmers, with conſiderable Editions, ſeventeenth Edition, 12mo.

E 4 H. W. 6